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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 25, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–066–1]

Asian Longhorned Beetle; Addition and Removal of Quarantined Areas in New Jersey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States. We are also removing the areas within Hudson County, NJ, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. We have determined that the Asian longhorned beetle no longer presents a risk of spread from those areas and that the quarantine and restrictions are no longer necessary.

DATES: This interim rule is effective October 18, 2005. We will consider all comments that we receive on or before December 23, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0078 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–066–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–066–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, National Coordinator, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

The ALB regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of Illinois, New Jersey, and New York are designated as quarantined areas.

Addition to Quarantined Area

Recent surveys conducted in New Jersey by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of ALB has occurred outside the existing quarantined areas in Middlesex and Union Counties, NJ. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New Jersey are conducting intensive survey and eradication programs in the infested area, and the State of New Jersey has quarantined the infested area and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the further spread of ALB within that State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the spread of ALB to other States and other countries.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability

for quarantine purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to include an additional area in Middlesex and Union Counties, NJ. The quarantined area is described in the rule portion of this document.

Removal of Quarantined Areas

The regulations currently list two quarantined areas in Hudson County, NJ, one in the city of Jersey City, the other in the city of Hoboken. Based on surveys conducted by inspectors of New Jersey State and county agencies and by APHIS inspectors, we are removing those areas in Hudson County from the list of quarantined areas. The last findings of ALB in the regulated areas in Hudson County were in October 2002. Since then, no evidence of ALB infestation has been found in those areas. Based on our experience, we have determined that sufficient time has passed without finding additional beetles or other evidence of infestation to conclude that ALB constitutes a negligible risk to those areas in the Jersey City and Hoboken communities. Therefore, we are removing the entry for Hudson County, NJ, from the list of quarantined areas in § 301.51–3(c).

Immediate Action

This rulemaking is necessary on an immediate basis to help prevent the artificial spread of ALB to noninfested areas of the United States. This rule will also relieve restrictions on certain areas that are no longer warranted. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the ALB regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the ALB to noninfested areas of the United States. We are also removing the areas within Hudson County, NJ, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. We have determined that the ALB no longer presents a risk of spread from those areas and that the quarantine and restrictions are no longer necessary.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The businesses potentially affected by this rule are nurseries, arborists, tree removal services, firewood dealers, garden centers, landscapers, recyclers of waste material, and lumber and building material outlets.

Middlesex and Union Counties

Within the quarantined area added by this interim rule, there are 103 entities potentially affected, including tree care businesses, plant nurseries and retailers, and firewood dealers. These businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but not costly; businesses operating under a compliance agreement would perform the inspections themselves and for those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of an inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with the ALB and, as a result, the inspector would not issue a certificate. In this case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.51–5(b).

Hudson County

In the area within Hudson County, NJ, deregulated by this interim rule, which is about 3.7 square miles in size and includes Jersey City and Hoboken, there are 31 entities that will be affected by this interim rule. These entities are mainly tree and yard care companies; there are also a few local government agencies that are responsible for tree care. These entities will no longer be subject to the restrictions in the regulations. While the size of these 31 entities is unknown, it is reasonable to assume that most are small entities, based on SBA size standards. Any benefit for these entities is likely to be minimal, given that the costs associated with the restrictions being relieved were themselves minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–3, paragraph (c), under the heading New Jersey, the entry for Hudson County is removed and the entry for Middlesex and Union Counties is revised to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

New Jersey

Middlesex and Union Counties. That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of St. Georges Avenue and Wood Avenue; then east on Wood Avenue to Curtis Street; then north on Curtis Street to East Baltimore Avenue; then east on East Baltimore Avenue to Dill Avenue; then north on Dill Avenue to Grant Street; then southeast on Grant Street to Alberta Avenue; then northeast on Alberta Avenue to County Road 616 (Park Avenue); then southeast on County Road 616 (Park Avenue) to U.S. Route 1; then north on U.S. Route 1 to Allen Street; then southeast on Allen Street to the east side of the New Jersey Turnpike right-of-way; then south along the east side of the New Jersey Turnpike right-of-way to Marshes Creek; then southeast along Marshes Creek to the Rahway River; then west along the south side of the Rahway River to Cross Creek; then south along Cross Creek through the wetlands to Peter J. Sica Industrial Drive; then east and south on Peter J. Sica Industrial Drive to Roosevelt Avenue (State Route 602); then west on Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest on Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue; then north on St. Georges Avenue to the point of beginning.

* * * * *

Done in Washington, DC, this 18th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–21169 Filed 10–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–019–3]

Certification Program for Imported Articles of *Pelargonium* spp. and *Solanum* spp. To Prevent Introduction of Potato Brown Rot

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the regulations by establishing a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 (R3B2) is known to occur. The interim rule prohibited the importation of articles of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur unless the articles are produced in accordance with the certification program. This final rule amends the regulations by modifying some of the requirements of the certification program to make them clearer and more flexible, by providing for the establishment of areas that are free of *R. solanacearum* R3B2 within countries where the bacterium is known to occur, and by exempting imported seeds of *Pelargonium* spp. and *Solanum* spp. from all requirements related to *R. solanacearum* R3B2. The requirements of the certification program are designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. This certification program is necessary to prevent the introduction of this bacterial strain into the United States.

EFFECTIVE DATE: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6653.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for propagation.

In an interim rule effective May 16, 2003, and published in the **Federal Register** on May 23, 2003 (68 FR 28115–28119, Docket No. 03–019–1), we amended the regulations by requiring that the phytosanitary certificates that must accompany all articles of *Pelargonium* spp. and *Solanum* spp. imported into the United States contain an additional declaration. (Articles of *Pelargonium* spp. and *Solanum* spp. imported under the Canadian greenhouse-grown restricted plant program in § 319.37–4(c), which are not required to be accompanied by a phytosanitary certificate when they are offered for importation into the United States, are exempt from this requirement.) The May 2003 interim rule was necessary because introductions of *R. solanacearum* R3B2, the bacterium that causes potato brown rot, had shown that articles of *Pelargonium* spp. and *Solanum* spp. can serve as vectors for its transmission. The additional declaration required by the May 2003 interim rule had to state either that the articles of *Pelargonium* spp. and *Solanum* spp. were produced in a production site that had been tested and found to be free of *R. solanacearum* R3B2 or that *R. solanacearum* R3B2 was not known to occur in the region in which the articles were produced.

We received comments on that interim rule requesting that we establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where *R. solanacearum* R3B2 is known to occur.

In addition, an introduction of the bacterium into the United States via infected geranium cuttings (*Pelargonium* spp.) was confirmed in February 2003; during the subsequent eradication effort, APHIS found some infected articles of *Pelargonium* spp.

that we believed were imported after the effective date of the May 2003 interim rule. This indicated to us that additional mitigations against the risk of introducing *R. solanacearum* R3B2 via imported articles of *Pelargonium* spp. and *Solanum* spp. were necessary.

Accordingly, in a subsequent interim rule effective May 24, 2004, and published in the **Federal Register** on April 23, 2004 (69 FR 21941–21947, Docket No. 03–019–2), we amended the regulations by requiring that articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where *R. solanacearum* R3B2 is known to occur be grown in accordance with a certification program. The certification program, which includes production site construction requirements, testing requirements, and operational requirements, is designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States via the importation of articles of *Pelargonium* spp. and *Solanum* spp. The interim rule also required that imported articles of *Pelargonium* spp. and *Solanum* spp. from countries where the bacterium *R. solanacearum* R3B2 is known to occur be accompanied by a phytosanitary certificate with an additional declaration stating that the articles were produced in accordance with the requirements of the certification program. We took this action based on our determination that the restrictions that had been added to the regulations in the May 2003 interim rule did not adequately mitigate the risk that imported articles of *Pelargonium* spp. and *Solanum* spp. could introduce this bacterial strain into the United States.

We solicited comments concerning the April 2004 interim rule for 60 days ending June 22, 2004. We received 10 comments by that date. They were from State and foreign plant protection organizations, nursery stock growers, industry associations, and university researchers. We have carefully considered all of the comments we received. They are discussed below by topic.

General Comments

Two commenters asserted that the available scientific evidence did not support placing any restrictions on the importation of articles of *Pelargonium* spp. and *Solanum* spp. to prevent the introduction of *R. solanacearum* R3B2, further claiming that the decision to establish the certification program in the April 2004 interim rule was driven by politics rather than science. One of these commenters also stated that there is no evidence that articles of *Pelargonium* spp. that are infected with *R. solanacearum* R3B2 pose a threat to the environment in general or potatoes in particular, noting that the recent introductions of the bacterium that had prompted our interim rules had not resulted in any introductions of *R. solanacearum* R3B2 into the environment. (Potatoes were identified in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in both interim rules as the *Solanum* crop that could experience the greatest magnitude of negative economic effects if *R. solanacearum* R3B2 was introduced into the United States.)

The Animal and Plant Health Inspection Service (APHIS) considers *R. solanacearum* R3B2 to be a quarantine pest. The bacterium is not known to occur in the United States; 10 years of field surveys undertaken by APHIS and by State governments have failed to discover any evidence of *R. solanacearum* R3B2 in the environment.

As mentioned above, an introduction of the bacterium into the United States via infected geranium cuttings (*Pelargonium* spp.) was confirmed in February 2003. The bacterium was subsequently eradicated; more than 2.1 million plants at 471 greenhouses throughout the United States were destroyed as part of the eradication effort. The eradication effort was, as one of the commenters noted, successful at preventing the introduction of *R. solanacearum* R3B2 into the wider U.S. environment. The survey procedures used to make this determination are described in detail in the 2004 New Pest Response Guidelines (Action Plan) issued in response to the introduction of *R. solanacearum* R3B2 into the United States.[1]

Experiences in other countries suggest that if *R. solanacearum* R3B2 were to become established in the United States, it would have a significant impact on U.S. potato production; the bacterium causes potatoes to rot through, making them unusable and seriously affecting potato yields. In addition, if *R. solanacearum* R3B2 were to be introduced into the U.S. environment, the bacterium would be extremely difficult to eradicate, both because of its many alternate hosts and because of its ability to survive in water. Letting an infected field lie fallow or using alternate, non-potato crops for a growing season is not effective as a means of eradicating *R. solanacearum* R3B2, as the bacterium survives in various common weeds, including *Solanum* species such as nightshade. The bacterium can also be transmitted from infected fields to other fields by streams and runoff. Therefore, it is imperative that APHIS implement measures restrictive enough to prevent *R. solanacearum* R3B2 from being introduced into the United States via the importation of potentially infected articles. The requirements of the certification program are designed to meet that goal.

Typically, APHIS simply prohibits the importation of articles of nursery stock that pose a risk of introducing plant pathogens such as *R. solanacearum* R3B2 into the United States, as plant pathogens are substantially more difficult to detect and neutralize than other plant pests. However, as indicated in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in the April 2004 interim rule, the United States imports substantial quantities of *Pelargonium* spp., and we did not want to halt this trade if there was an effective alternative. We believe the requirements of the certification program strike a balance by allowing continued importation of articles of *Pelargonium* spp. and *Solanum* spp. but ensuring that such importation does not introduce *R. solanacearum* R3B2 into the United States.

One commenter asserted that the requirements of the certification program are identical to the requirements of the Minimum Sanitation Protocols for Offshore Geranium Cutting Production that APHIS issued in response to the February 2003 introduction of *R. solanacearum* R3B2 via imported geranium cuttings.[2] The commenter asked what assurance we have that the certification program will be effective, since some infected geranium cuttings appeared to have entered the United States after the Minimum Sanitation Protocols were issued.

We believe that the apparent entry of infected geranium cuttings after the Minimum Sanitation Protocols were issued was due to the failure of one importer to properly implement the Minimum Sanitation Protocols, rather than a deficiency in the protocols themselves. (The Minimum Sanitation

[1] This document may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/ep/ralstonia/rasltoniaactionplanv4web.pdf.* Copies of all documents related to APHIS' response to the introduction of *R. solanacearum* R3B2 into the United States may also be requested from the person listed under **FOR FURTHER INFORMATION CONTACT.**

[2] The Minimum Sanitation Protocols for Offshore Geranium Cutting Production may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/ep/ralstonia/ralstoniaworkplan.pdf.*

Protocols contain requirements that are similar to, but more specific than, the requirements of the certification program.) We continue to believe that the requirements of the certification program will be effective at preventing the introduction of *R. solanacearum* R3B2 into the United States if they are properly implemented under the oversight of APHIS and the national plant protection organization (NPPO) of the country of origin of the imported articles. Adding the certification program to the regulations via our April 2004 interim rule helped to ensure that any production requirements imposed by APHIS are properly implemented. We are making no changes to the April 2004 interim rule in response to this comment.

One commenter stated that the workplans developed among APHIS, the NPPOs of exporting countries, and the owners or operators of production sites need to address operational details of production under the certification program more specifically than the regulations established by the April 2004 interim rule do.

We agree with this comment. The regulations describing the certification program are intended to establish the necessary performance standards, while the workplans cited by the commenter are intended to describe in greater detail what needs to be done at a specific production site or sites to meet these standards. We have prepared a workplan for this program by combining the Minimum Sanitation Protocols for Offshore Geranium Cutting Production with a testing and sampling plan and a signature page, which is signed by APHIS and the NPPO of each exporting country. The workplan requires the inspection personnel of the exporting country's NPPO to work in conjunction with APHIS when appropriate, and to provide the oversight needed to demonstrate that each production site will carry out the procedures, sampling, and testing described in the workplan. Additionally, the workplan requires the exporting country's NPPO to provide the proper phytosanitary certification of all host material, which includes the additional declaration ''Tested and found free of Ralstonia solanacearum race 3 biovar 2.''

One commenter suggested that APHIS establish a Web site that would provide updates to the public whenever the best management practices associated with growing articles of *Pelargonium* spp. and *Solanum* spp. are changed.

APHIS maintains documents pertaining to *R. solanacearum* R3B2 on the Plant Protection and Quarantine Web page, at *http://www.aphis.usda.gov/ppq/ep/ralstonia/index.html.* That Web site hosts the documents cited in this final rule related to the production of articles of *Pelargonium* spp. and *Solanum* spp. for export to the United States in countries or areas where *R. solanacearum* R3B2 is known to occur, along with more general information about APHIS efforts to prevent the introduction of the bacterium into the United States. We will continue to update that Web page to reflect advances in scientific knowledge and amendments to our regulations regarding *R. solanacearum* R3B2, including changes to the best management practices associated with growing articles of *Pelargonium* spp. and *Solanum* spp.

Characteristics of R. solanacearum R3B2

The April 2004 interim rule included information about the means by which *R. solanacearum* R3B2 can spread and the reasons it is difficult to eradicate. This information is presented above under the heading ''General Comments'' in the context of discussing why it was necessary to restrict the importation of articles of articles of *Pelargonium* spp. and *Solanum* spp.; it served a similar function in the interim rule. We received several comments concerning this information.

One commenter stated that the spread of *R. solanacearum* R3B2 from field to field via run-off water had never been substantiated to the commenter's knowledge in Europe. This commenter cited establishment in wild bittersweet (*Solanum duclamara*) and subsequent irrigation with contaminated surface water as of more importance. Another commenter stated that no scientific evidence suggests that *R. solanacearum* R3B2 can survive in water.

Once *R. solanacearum* R3B2 is introduced into the environment, its primary means of spread is via contaminated run-off water or irrigation water. This has been proven by experiences in the United Kingdom (UK).[3] Furthermore, the first commenter provided additional evidence that suggests it is necessary to address the risk of transmission of the bacterium into a production site via contaminated water.

In response to the second commenter's assertion, the bacterium does not survive indefinitely in water, as it requires food to metabolize, but it can survive for the limited time required for plant-to-plant transmission via run-off water.

One commenter stated that *Pelargonium* spp. are not preferred hosts for *R. solanacearum* R3B2, so crop losses in *Pelargonium* spp. due to the bacterium are minimal and can be easily eliminated by proper production practices. This commenter also stated that *R. solanacearum* R3B2 rarely results in substantial yield losses in potatoes in cooler climates, and a proper control program can cause it to occur only sporadically and easily eliminate it from the production column.

We agree with the commenter's statement regarding the host status of *Pelargonium* spp. for *R. solanacearum* R3B2; however, since infected articles of *Pelargonium* spp. have introduced *R. solanacearum* R3B2 into the United States, necessitating eradication efforts that were costly both to APHIS and to U.S. nursery stock growers, we believe it is necessary to regulate their importation from countries where *R. solanacearum* R3B2 is known to occur.

With regard to the commenter's assertions about the potential impact of *R. solanacearum* R3B2 on potato crops, it should be reiterated that *R. solanacearum* R3B2 is a quarantine pest that is not known to occur in the United States. It can be difficult to predict the impact of a plant pest in a new environment. In addition, if *R. solanacearum* R3B2 were introduced into the United States, APHIS would likely place a quarantine on any areas of the United States where the bacterium was known to occur, which would result in increased production costs for U.S. producers of articles of *Pelargonium* spp. and *Solanum* spp. and the possible loss of export markets for such articles. As described in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in both interim rules, losses for U.S. potato producers due to quarantines and reduced export markets could potentially amount to hundreds of millions of dollars in the event of an introduction of *R. solanacearum* R3B2 into the United States. We do not believe that the information cited by the commenter warrants reconsideration of *R. solanacearum* R3B2's status as a quarantine pest or warrants relaxing any of the restrictions on the importation of articles of *Pelargonium* spp. and *Solanum* spp. that we added to the regulations in the two interim rules.

One commenter felt that our use of the term ''dangerous'' to describe *R. solanacearum* R3B2 and our statement

[3] Summarized by John Elphinstone, Central Science Laboratory, Department for Environment, Food, and Rural Affairs, York, UK, in ''Monitoring and control of the potato brown rot bacterium (Ralstonia solanacearum) in the UK.'' This presentation was given at ''Planning for *Ralstonia solanacearum* R3B2 Detection on Solanaceous Crops in the U.S.,'' meeting held at APHIS headquarters on June 19, 2003.

that an introduction of *R. solanacearum* R3B2 into the United States ''could be devastating to U.S. potato production'' were unnecessarily inflammatory.

Our use of the term ''dangerous'' was intended to indicate that *R. solanacearum* R3B2 has the potential to cause economic damage to crops in the United States if it is introduced and spreads to the wider environment. Similarly, our use of the term ''devastating'' to describe the potential impact of *R. solanacearum* R3B2 on U.S. potato production was intended to reflect the fact that if potato brown rot were to become established in the United States, the potato industry could potentially lose hundreds of millions of dollars due to direct losses and indirect losses from quarantines and diminished export markets. (These possibilities were discussed in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in both interim rules.) To address this commenter's concern, in the preamble to this final rule, we will refer more directly to the potential economic impact of *R. solanacearum* R3B2 when discussing the importance of preventing its introduction into the United States. No changes to the regulations established by the two interim rules are necessary as a result of this comment.

We also received comments regarding two other characteristics of *R. solanacearum* R3B2.

First, both interim rules restricted the importation of articles of *Pelargonium* spp. and *Solanum* spp.; the term ''articles'' is understood to refer to both plants and all propagative material that can be derived from a plant, including seed. Two commenters disputed the implied assertion that *R. solanacearum* R3B2 could be transmitted via seed and asked us to exempt seed of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium exists from the requirements established by the two interim rules.

The commenters are correct that *R. solanacearum* R3B2 is not a seedborne pathogen and that we should, therefore, exempt seeds from the requirements for imported articles of *Pelargonium* spp. and *Solanum* spp. that we established in § 319.37–5(r) in the two interim rules. We have done so in this final rule by adding a statement to the introductory text of § 319.37–5(r) stating that seeds are not subject to that paragraph's requirements. (We are not amending the entries for ''*Pelargonium* spp. not meeting the conditions for importation in § 319.37–5(r)'' and ''*Solanum* spp. not meeting the conditions for importation in § 319.37–5(r)'' in the table of prohibited articles in § 319.37–2(a), because the entries for prohibited articles in that table include seed only if specifically mentioned.)

Although we are exempting seed from the requirements of paragraph § 319.37–5(r) in this final rule, we will refer simply to ''articles of *Pelargonium* spp. and *Solanum* spp.'' in the following discussion of comments for ease of reading.

Second, both interim rules also limited the articles that were regulated to those of *Pelargonium* spp. and *Solanum* spp. One commenter asked if the host range of *R. solanacearum* R3B2 was limited to articles of *Pelargonium* spp. and *Solanum* spp., and stated that if it is not, the importation of asexual propagative material from the entire host range of the bacterium should be restricted.

We agree that other plants can serve as hosts for *R. solanacearum* R3B2, and we are reviewing the available evidence regarding plants that may serve as hosts for *R. solanacearum* R3B2. If necessary, we will conduct further rulemaking to address any risks their importation may pose. Such an action would afford the public, and foreign producers of these species in particular, an opportunity to comment on the suitability and effectiveness of the certification program's requirements for production of those species. Thus, we are making no changes to the regulations established by the two interim rules in response to this comment.

R. solanacearum in the United States

In the April 2004 interim rule, we made the following statements about the presence of *R. solanacearum* in the United States:

''At least three biovars of *R. solanacearum* race 3 are distinguished on the basis of biochemical properties. Biovar 1, which is currently established in the United States, does not tolerate cold temperatures; its establishment is thus limited to the southern part of the United States. However, biovar 2, which is not present in the United States, is adapted to low temperatures and is found in temperate zones, meaning that it could thrive in the northern States where most U.S. potatoes are produced. If *R. solanacearum* race 3 biovar 2 were to become established in the United States, it would likely have a devastating impact on potato production.

''Biovar 1 is currently established in the United States, and we have not established an official control program for it. Therefore, in accordance with international trade agreements, we cannot place restrictions on the importation of articles that may be infected with biovar 1. Biovar 2, however, is not established in the United States and is considered a pest of quarantine significance. Therefore, under those same international agreements, we are free to place restrictions on the importation of articles that may be infected with biovar 2.''

We received several comments regarding these statements.

One commenter stated that it is not *R. solanacearum* race 3 biovar 1 that does not tolerate cold temperatures and that is present in the United States, but rather *R. solanacearum* race 1 biovar 1.

At the time the commenter submitted this comment, during the 60 days after the publication of the April 2004 interim rule, the commenter was correct. The races of *R. solanacearum* are distinguished on the basis of their primary hosts; race 1 causes bacterial wilt on tomatoes, while race 3 causes brown rot on potatoes. Both race 1 and race 3 can infect hosts other than their primary hosts. *R. solanacearum* race 1 biovar 1 is established in the southeast United States.

A strain of *Ralstonia* was discovered in samples from a greenhouse and pond in the State of Florida in September 2004. It was eventually identified as *R. solanacearum* biovar 1, but testing has to this point produced conflicting results as to what race of the bacterium is present in the samples. Regardless, APHIS is not treating any *R. solanacearum* of biovar 1 as a quarantine pest.

In the absence of further information regarding the strain of *R. solanacearum* that we discovered in Florida in September 2004, we will refer to the strain of *R. solanacearum* that is present in the United States as race 1 biovar 1 in the preamble of this final rule. However, because the interim rules addressed *R. solanacearum* R3B2 and the bacterium present in Florida has been determined not to be a biovar 2 *R. solanacearum* bacterium, no changes to the regulations established by the two interim rules are necessary as a result of this comment.

Two commenters asked APHIS to present evidence that *R. solanacearum* R3B2 is not present in the United States. These commenters stated that U.S. potato growers are not required to test wilted plants for *R. solanacearum* R3B2, which means that it is unknown whether *R. solanacearum* R3B2 exists in U.S. potatoes. Another commenter took issue with our statement that *R. solanacearum* R3B2 is not present in the United States, since APHIS conducted a recent eradication effort against the bacterium, and suggested that we state

instead that we are attempting to eradicate *R. solanacearum* R3B2 within the United States.

All of the available data indicate that our eradication effort has been successful at preventing *R. solanacearum* R3B2 from becoming established within the United States. Data from surveys conducted both by APHIS and by State governments indicate that *R. solanacearum* R3B2 is not present in the United States.

Potato growers within the United States are not required by APHIS to test their wilted plants for *R. solanacearum* R3B2 because the bacterium is not known to occur in the United States. If *R. solanacearum* R3B2 were known to occur in the United States, we would establish a domestic quarantine in order to pursue its eradication or containment. Such a quarantine would be likely to include a requirement that potato growers submit wilted plants for testing.

Many States have potato certification programs to ensure freedom from disease and to improve marketability for their potato crops. These State programs require potato producers to test for disease organisms that may occur in the production cycle if the potato plants show symptoms such as wilting. These programs do not specifically seek to identify *R. solanacearum* R3B2 infections because the bacterium is not known to occur in the United States, but the presence of symptoms caused by *R. solanacearum* R3B2 infection would indicate that a disease is present, and the potatoes would be subsequently tested for diseases, including *R. solanacearum* R3B2, until the cause of the symptoms was determined.

As indicated above, survey data indicate that *R. solanacearum* R3B2 is not present in the United States; these data are what led us to the conclusion that *R. solanacearum* R3B2 is not known to occur in the United States.

One commenter cited three publications that the commenter believed could indicate that *R. solanacearum* R3B2 is present in the United States:

• In a 1979 finding of *R. solanacearum* drawn from *Pelargonium* x *hortorum* in the United States,[4] the race and biovar of the bacterium were unclear, but pathogenicity tests showed that the isolates from the plant failed to cause disease on tobacco, which the commenter asserted was typical of *R. solanacearum* R3B2. However, this finding would also be consistent with *R. solanacearum* race 1 biovar 1, which APHIS has acknowledged is established in the United States. Therefore, no definitive statement about the presence of *R. solanacearum* R3B2 in the United States can be made based on this finding.

• The commenter pointed out that *R. solanacearum* R3B2 was found on *Pelargonium zonale* in Wisconsin in 1999.[5] However, the bacterium was found only in greenhouses; APHIS eradicated the bacterium after it was found, and there is no evidence that it was transmitted into the wider U.S. environment.

• The commenter also noted that *R. solanacearum* race 1 biovar 1 has been found on *P. zonale* in Ohio.[6] *R. solanacearum* race 1 biovar 1, as noted above, is established in the United States, and APHIS has not established an official control program for it. The interim rules placed restrictions on the importation of articles of *Pelargonium* spp. and *Solanum* spp. to prevent the introduction of *R. solanacearum* R3B2.

This commenter also asked for information on official control of *R. solanacearum* in the United States. As described above, *R. solanacearum* race 1 biovar 1 is established in the United States, and APHIS has not established an official control program for it, nor have we established an official control program for any other biovar of race 1. We do not have an official control program for *R. solanacearum* R3B2 because that strain of the bacterium is not known to occur in the United States. Races 2, 4, and 5 are also not known to occur in the United States. As mentioned earlier in this document, we are not treating the *R. solanacearum* biovar 1 bacterium found in Florida as a quarantine pest.

Two commenters stated that they were not aware of any evidence that *R. solanacearum* R3B2 could survive in a northern climate. Another commenter argued that our assertion that *R. solanacearum* R3B2 is adapted to low temperatures may not be justified by the available evidence and suggested that we state instead that R3B2 ''appears to be adapted to lower temperatures.''

Janse (1996) indicates that R3B2 is, in fact, adapted to low temperatures.[7] If we become aware of any new research disputing the existing evidence, we will evaluate it and, if necessary, update the regulations.

Distribution of R. solanacearum in Other Countries

In the May 2003 interim rule, we listed the following countries as countries where *R. solanacearum* R3B2 is not known to occur: Algeria, Austria, Belarus, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Israel, Italy, Latvia, Lithuania, Moldavia, Morocco, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, and Ukraine. (We did not provide this list in the April 2004 interim rule; one commenter on that interim rule asked that we provide it here.) Two comments on the April 2004 interim rule raised issues related to this list.

The April 2004 interim rule exempted articles of *Solanum* spp. from Canada from the requirement that the phytosanitary certificate accompanying articles of *Solanum* spp. must contain an additional declaration; Canada is the only country allowed to export articles of *Solanum* spp. other than true seed to the United States, as the importation of *Solanum* spp. other than seed from other countries is prohibited due to other disease risks. One commenter asked whether *R. solanacearum* R3B2 might have entered Canada after it entered the United States in 2003.

We are aware of no evidence suggesting that *R. solanacearum* R3B2 has occurred in Canada, and the Canadian NPPO has not reported its presence. All the evidence available indicates that APHIS was successful at confining the *R. solanacearum* R3B2 in the United States to a few hundred facilities and that the bacterium was not transmitted into the wider environment in the United States, much less in Canada. As a signatory nation to the International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization, Canada is obligated to report any discoveries of *R. solanacearum* R3B2 to the IPPC.

One commenter, the Secretaria de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación of Mexico (SAGARPA, Mexico's NPPO), requested that Mexico be added to the list of countries where *R. solanacearum* R3B2 is not known to occur. The commenter stated that the only article that states that *R. solanacearum* R3B2 occurs in Mexico, a 1978 publication by Dr. Leopoldo Fucikovsky, used an oxidase test to determine that *R. solanacearum*

[4] Strider, D.L., Jones, R.K., and Haygood, R.A. 1981. ''Southern bacterial wilt of geranium caused by *Pseudomonas solanacearum*,'' *Plant Disease* 65: 52–53.

[5] Hudelson, B.D. 1999. ''Southern wilt.'' *University of Wisconsin Garden Facts,* May 11, 1999.

[6] Nameth, S. 1999. ''Bacterial disease alert in geraniums.'' *FlowerTECH2* 4: 65–67.

[7] Janse, J. D. 1996. ''Potato brown rot in Western Europe—History, presence, occurrence and some remarks on possible origin, epidemiology and control strategies.'' *EPPO Bull.* 26: 679–985.

R3B2 was present. The oxidase test is inadequate to establish the presence of *R. solanacearum* R3B2 since the test reacts not only with *R. solanacearum* R3B2 but also with phenols and other plant chemistry components. According to the commenter, all recent studies regarding the occurrence of *R. solanacearum* R3B2 have not discovered the bacterium in Mexico. The commenter also stated that Mexico performs surveys for *R. solanacearum* R3B2 using enzyme-linked immunosorbent assays (ELISA) and polymerase chain reaction (PCR) tests and has found no evidence of the bacterium.

SAGARPA did not provide citations for the studies it cited as supporting its view. If SAGARPA wishes to provide us with more specific information establishing Mexico's freedom from *R. solanacearum* R3B2, such as parameters of any surveys undertaken and the results of those surveys, we will consider it. Alternatively, SAGARPA may propose to establish an area within Mexico as free of *R. solanacearum* R3B2; the process for doing so is described in more detail under the heading ''Pest-Free Areas and Nurseries,'' which follows directly.

Pest-Free Areas and Nurseries

The April 2004 interim rule requires that articles of *Pelargonium* spp. and *Solanum* spp. that are imported into the United States from a country where *R. solanacearum* R3B2 is known to occur be produced in accordance with the certification program established by that interim rule. Two commenters acknowledged the necessity of placing restrictions on the importation of articles other than seed of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur, but stated that the requirements of the certification program are unnecessarily restrictive given the phytosanitary controls already in place in certain countries that export articles of *Pelargonium* spp. and *Solanum* spp. These two commenters asked that we recognize areas within a country where *R. solanacearum* R3B2 is known to occur as areas free of *R. solanacearum* R3B2.

APHIS recognizes areas within a country as being free of plant pests in accordance with the requirements in International Standards for Phytosanitary Measures (ISPM) Publication No. 4, ''Requirements for the Establishment of Pest Free Areas,'' which was published in 1996 by the IPPC and which is incorporated by reference into our regulations at 7 CFR 300.5.[8] To establish a pest-free area under this standard, a country must establish three main components: Systems to establish freedom, phytosanitary measures to maintain freedom, and checks to ensure that freedom has been maintained. The standard sets out performance-based requirements relating to each of these three components. Any country wishing to establish an area within its borders as free of *R. solanacearum* R3B2 may submit the appropriate information in accordance with ''Requirements for the Establishment of Pest Free Areas'' and propose that APHIS recognize the area in question as an area that is free of *R. solanacearum* R3B2. APHIS will evaluate whether the components the country has established are sufficient to establish the area as a pest-free area. At the present time, no foreign NPPO has submitted such a proposal.

However, the regulations established by the two interim rules do not explicitly provide for the possible recognition of an area within a country as free of *R. solanacearum* R3B2. To allow for this possibility, we are adding a new paragraph (r)(2)(ii) to the regulations in § 319.37–5. This paragraph will exempt articles of *Pelargonium* spp. and *Solanum* spp. imported from areas free of *R. solanacearum* R3B2 within countries where *R. solanacearum* R3B2 is known to occur from the requirements of the certification program. Instead, such articles will be required to be accompanied by a phytosanitary certificate containing an additional declaration that states ''This article is from an area that has been established as free of *Ralstonia solanacearum* race 3 biovar 2.'' We are moving the requirements presently in paragraph (r)(2) into a new paragraph (r)(2)(i) to accommodate this change.

These two commenters also asked that we recognize the growing practices in certain nurseries as sufficient to ensure the freedom of articles of *Pelargonium* spp. and *Solanum* spp. produced in those nurseries from *R. solanacearum* R3B2.

One of these commenters noted that the presence of *R. solanacearum* R3B2 in the UK has been minimized. All production of potato and tomato within the European Union (EU) is under official compliance with EU production directive 98/57/EC. The requirements of this directive have ensured that outbreaks of potato brown rot and tomato bacterial wilt (a disease caused in tomatoes by *R. solanacearum* R3B2) have been contained at the place of production. Directive 98/57/EC also includes measures for the safe disposal of any infected crops, therefore removing any possibility of the pathogen's spread through trade. Furthermore, annual surveys conducted by the UK's NPPO ensure that the current locations of contaminated watercourses are known and that irrigation from such sources is prohibited. As a result, only five cases of the disease have been detected in ware potato crops, and only one case has been detected in tomatoes. The commenter stated that there have been no findings of *R. solanacearum* R3B2 in the UK since 2000.

The other commenter asked specifically that we exclude *Solanum nigrum* produced under protected cultivation from the final rule. The commenter also stated that *R. solanacearum* R3B2 is not known to occur in some nurseries producing *Pelargonium* spp. in EU Member States. The commenter further argued that, if growing practices are sufficient to exclude *R. solanacearum* R3B2 from a production site, the testing provisions of the certification program would be superfluous.

We believe that the requirements of the certification program are all essential to ensuring that articles of *Pelargonium* spp. and *Solanum* spp. that are imported into the United States from a country where *R. solanacearum* R3B2 is known to occur do not introduce that bacterium into the United States. Accordingly, we will recognize the growing practices in certain nurseries (including protected cultivation) as sufficient to ensure the freedom of articles produced in those nurseries from *R. solanacearum* R3B2 only if those practices satisfy the requirements of the certification program. Growers in countries where *R. solanacearum* R3B2 is known to occur who believe that their production practices satisfy the requirements of the certification program may request to have those production practices evaluated by APHIS.

With regard to the first commenter's description of production practices in the UK, we consider the UK to be a country where *R. solanacearum* R3B2 is known to occur, and the commenter did not dispute that. If certain areas in the UK are believed to be free of *R. solanacearum* R3B2, the NPPO of the UK may attempt to establish their pest-free status by submitting the information required by ISPM Publication No. 4 to APHIS for further evaluation as described above. Otherwise, UK growers should request

[8] ISPM publications can be viewed on the Internet at *https://www.ippc.int/id/13399*.

to have their production practices recognized by APHIS as satisfying the requirements of the certification program.

We disagree with the second commenter's assertion that testing is superfluous in a production site that has taken measures to exclude *R. solanacearum* R3B2. Just as the establishment of a pest-free area requires checks to ensure that the area remains free of the relevant pest, testing is an important means of ensuring that the measures a production site has taken to exclude *R. solanacearum* R3B2 are being properly implemented and thus excluding the bacterium. We are making no changes to the April 2004 interim rule in response to these comments.

Testing for R. solanacearum R3B2

One commenter asked us to specify what criteria must be met to determine whether an area is free of *R. solanacearum* R3B2 and what tests may be used to determine that a production site is free of *R. solanacearum* R3B2.

As mentioned earlier in this document, the determination that an area is free of a pest is based on our assessment of components that include, but are not limited to, regular checks to ensure that the area remains free of the pest. Testing may be carried out using any means that the country in which the proposed pest-free area is located deems practical and that APHIS determines to be effective.

The April 2004 interim rule stated that we are currently aware of two acceptable methods for testing production sites: An ELISA, which can determine whether *Ralstonia* spp. bacteria are present, and a PCR test that can determine whether *R. solanacearum* R3B2 bacteria are present. Domestic greenhouses tested for *R. solanacearum* R3B2 during the recent eradication effort typically used ELISA to screen potentially symptomatic material; if the material was infected with *Ralstonia* spp., the PCR test was used to determine whether those bacteria were race 3, biovar 2. Other testing methods may be used if APHIS determines that those methods are adequate to confirm that production facilities are free of *R. solanacearum* R3B2.

The preamble of the April 2004 interim rule stated: ''One approach to preventing the entry of *R. solanacearum* R3B2 would be to test articles of *Pelargonium* spp. and *Solanum* spp. that are offered for importation into the United States at the port of entry. For such an approach to be effective, our tests would need to be able to distinguish between the biovars of the bacterium and to identify the presence of *R. solanacearum* R3B2. However, there currently exists no standalone, specific test for *R. solanacearum* race 3 biovar 2 that is practical for testing articles of *Pelargonium* spp. and *Solanum* spp. at ports of entry.'' One commenter stated that testing for *R. solanacearum* R3B2 at ports of entry is quite possible; alternatively, imported articles could be tested during postentry inspections of the nurseries where the articles are further cultivated.

We do not dispute that such testing is possible; however, APHIS currently lacks the infrastructure and resources to either perform the PCR test at the port of entry or perform an ELISA at the port of entry, hold the tested articles until the test results are available, and then run a separate PCR test on any articles that tested positive by ELISA for the presence of *Ralstonia* spp. Therefore, we have focused our efforts on excluding *R. solanacearum* R3B2 from articles offered for importation into the United States.

Specific Provisions of the Certification Program

The April 2004 interim rule added a definition of *production site* to § 319.37–1 that read: ''A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.'' This definition was taken from ISPM Publication No. 5, ''Glossary of Phytosanitary Terms 2002.'' [9]

One commenter stated that this definition might cause confusion with regard to some of the requirements of the certification program. For example, § 319.37–5(r)(3)(iv) of the certification program established by the April 2004 interim rule requires the production site for articles of *Pelargonium* spp. and *Solanum* spp. to be surrounded by a 1-meter buffer. The commenter suggested that, given the definition of *production site* established in the April 2004 interim rule, this requirement could be interpreted to mean that an entire farm, composed of multiple greenhouses in which articles of *Pelargonium* spp. and *Solanum* spp. are produced, is required to be surrounded by a buffer, rather than the individual greenhouses. The commenter cited similar potential problems regarding the certification program's requirement in § 319.37–5(r)(3)(v) that the buffer be kept free of dicotyledonous weeds.

The definition of *production site* established in the April 2004 interim rule states that the production site may include ''the entire production site or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.'' Under this definition, on a farm that is managed as a single production site for phytosanitary purposes but is composed of multiple greenhouses, each individual greenhouse in the farm is considered to be a portion of the production site. (Individual greenhouses are considered to be individual production sites only if they are managed separately for phytosanitary purposes, as provided for in the definition.) Thus, the production site in this case would not include all the land of the farm on which the greenhouses are located but rather all the portions of the farm in which production of articles of *Pelargonium* spp. and *Solanum* spp. takes place—the individual greenhouses. Thus, each individual greenhouse on such a farm would be required to have a 1-meter buffer that is kept free of dicotyledonous weeds.

We are making no changes to the definition of *production site* in response to this comment. However, we are revising paragraphs (r)(3)(iv) and (r)(3)(v), which refer to the production site in the context of the requirements the commenter mentioned, to clarify that these requirements apply to each greenhouse on the production site rather than the entire production site. We believe these changes addresses the commenter's concern.

Paragraph (r)(3)(iii) of the certification program established in § 319.37–5 by the April 2004 interim rule required that production sites conduct ongoing testing for *R. solanacearum* R3B2 and that only those articles of *Pelargonium* spp. and *Solanum* spp. that have been tested with negative results for the presence of *R. solanacearum* R3B2 may be used in production and export. One commenter was concerned that this requirement could be interpreted to mean that each article exported to the United States must be tested.

We did not intend to require that each article used in production and export be tested individually; rather, we intended to require that each article that has been used in production and export be part of a group of articles that has been tested in accordance with a protocol sufficient to determine, with a high degree of certainty, whether the articles in the group are infected with *R. solanacearum* R3B2. Details of the

[9] ISPM publications can be viewed on the Internet at *https://www.ippc.int/id/13399*.

testing and the statistical plan for the testing protocol are specified in the workplan developed by APHIS, the foreign NPPO, and the owner or operator of the production site.

The commenter is correct in stating that the language in the April 2004 interim rule is ambiguous on this point. Therefore, we are amending paragraph (r)(3)(iii) to state that only articles of *Pelargonium* spp. and *Solanum* spp. from a group of articles that has been tested according to an APHIS-approved testing protocol with negative results for the presence of *R. solanacearum* R3B2 may be used in production and export.

Paragraph (r)(3)(iv) of the certification program established by the April 2004 interim rule required that the production site be constructed in a manner that ensures that outside water cannot enter the production site. One commenter pointed out that water is necessary to grow plants, and this water must be brought into the production site from outside the production site; the interim rule technically excluded such water. The commenter suggested changing the requirement to state that the production site must be constructed in a manner that ensures that runoff water from areas surrounding the production site cannot enter the production site.

We agree with this comment and have changed paragraph (r)(3)(iv) of the certification program established by the April 2004 interim rule as the commenter suggests.

Paragraph (r)(3)(viii) of the certification program established by the April 2004 interim rule prohibited growing media and containers for articles of *Pelargonium* spp. and *Solanum* spp. from coming into contact with soil and prohibited the use of soil as a growing medium for articles of *Pelargonium* spp. and *Solanum* spp. One commenter hypothesized that pasteurized soil might in the future be considered an adequate growing medium and asked that, to ensure that the certification program could accommodate such a future development, we remove the prohibitions relating to soil and refer instead to APHIS-approved growing media in paragraph (r)(3)(viii).

We agree that it would be best to provide such flexibility in the regulations in the case that pasteurized soil becomes an acceptable growing medium. Therefore, we have changed paragraph (r)(3)(viii) of the certification program established by the April 2004 interim rule as the commenter requested. However, it is important to reiterate that soil of any kind will not be considered an APHIS-approved growing medium at this time.

Paragraph (r)(3)(ix) of the certification program established by the April 2004 interim rule required that water used in maintenance of the plants at the production site be free of *R. solanacearum* R3B2. It also required that the production site derive the water from an APHIS-approved source or treat the water with an APHIS-approved treatment before use. Two commenters expressed concerns about this requirement. One stated that no nurseries in the UK use surface water in the production of articles of *Pelargonium* spp., and infected *Solanum dulcamara* outside of contaminated watercourses have not been identified during official inspections over many years. Therefore, no water-borne route of transmission for *R. solanacearum* R3B2 into UK nurseries has been identified. The second commenter stated that rain water, tap water, or water from deep wells is used in the production of articles of *Pelargonium* spp. in the Netherlands, Belgium, and Germany.

If the water sources cited by the commenters can be proven to be free of *R. solanacearum* R3B2, APHIS will approve the sources for use in the production of articles of *Pelargonium* spp. and *Solanum* spp. under the certification program; approval will be granted in the workplan developed among APHIS, the NPPO of the exporting country, and the owner or operator of the production site. We are making no changes to the April 2004 interim rule in response to these comments.

Paragraph (r)(3)(x) of the certification program established by the April 2004 interim rule prohibited the use of ebb-and-flow irrigation in the production of articles of *Pelargonium* spp. and *Solanum* spp. under the certification program. We prohibited the use of ebb-and-flow irrigation because it exposes all the articles grown using such an irrigation system to any *R. solanacearum* R3B2 that may be present in any one article in the system. One commenter stated that ebb-and-flow irrigation should not be prohibited in production facilities located in areas within a country where *R. solanacearum* R3B2 is not known to occur.

We agree that this requirement would be unjustified if an exporting country where *R. solanacearum* R3B2 is known to occur established, in accordance with the ''Requirements for the Establishment of Pest Free Areas'' referred to above, that an area within that country is free of *R. solanacearum* R3B2. In fact, under this final rule, production facilities in such a pest-free area would be eligible to export articles of *Pelargonium* spp. and *Solanum* spp. under paragraph § 319.37–5(r)(2)(ii) of the regulations, which requires only that the phytosanitary certificate accompanying the articles contain an additional declaration that states that the articles are from an area that has been established as free of *R. solanacearum* R3B2 in accordance with ISPM No. 4, ''Requirements for the Establishment of Pest Free Areas.'' However, as discussed above, APHIS has received no requests to establish such pest-free areas at this time.

Paragraph (r)(3)(xii) of the certification program established by the April 2004 interim rule required that articles of *Pelargonium* spp. and *Solanum* spp. produced for export within an approved production site be handled and packed in a manner adequate to prevent the presence of *R. solanacearum* R3B2. One commenter recommended that the word ''presence'' be changed to ''introduction,'' or that the word ''introduction'' be added to this requirement.

The intent of the certification program is to prevent the introduction of *R. solanacearum* R3B2 into the United States. Therefore, we agree with this commenter, and we have changed the word ''presence'' to ''introduction'' in paragraph (r)(3)(xii) of the certification program established by the April 2004 interim rule as the commenter suggests.

Paragraph (r)(3)(xiii) of the certification program established by the April 2004 interim rule stated that if *R. solanacearum* R3B2 is found in the production site or in consignments from the production site, the production site will be ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States. The paragraph further stated that a production site may be reinstated if a reinspection reveals that the production site is free of *R. solanacearum* R3B2 and all problems in the production site have been addressed and corrected to the satisfaction of APHIS.

One commenter asked us to rewrite this paragraph to provide for the possibility of individual greenhouses in a production site to be declared ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States if articles of *Pelargonium* spp. or *Solanum* spp. infected with *R. solanacearum* R3B2 can be traced back to an individual greenhouse in a production site, rather than declaring the entire production site ineligible.

We believe it is safe to declare an individual greenhouse among several greenhouses ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States only if the greenhouse is managed separately for phytosanitary purposes and thus qualifies as a production site itself, as specified in the definition of *production site* that the April 2004 interim rule added to § 319.37–1. Otherwise, production practices in a production site composed of multiple greenhouses could spread *R. solanacearum* R3B2 from one greenhouse to another, meaning that it would not be safe to allow importation from any greenhouse in a production site in which one greenhouse produced articles of *Pelargonium* spp. or *Solanum* spp. infected with *R. solanacearum* R3B2. We are making no changes to the April 2004 interim rule in response to this comment.

One commenter stated that production sites should have to be tested with negative results three times over a 90-day period in order to be considered eligible for reinstatement into the certification program. This commenter further requested that details of the testing that would be required for reinstatement and other requirements for reinstatement be included in the regulations.

The three-test, 90-day standard the commenter suggests is a reasonable standard, but it may not be appropriate in all cases. We prefer to specify conditions for production site testing and reinstatement in the workplan developed among APHIS, the NPPO of the exporting country, and the operator of the production site, in order to take into account local production conditions and capabilities. We are making no changes to the April 2004 interim rule in response to this comment.

Paragraph (r)(3)(xv) of the certification program established by the April 2004 interim rule required that the government of the country in which articles other than seed of *Pelargonium* spp. or *Solanum* spp. are produced enter into a trust fund agreement with APHIS before each growing season. The government of the country in which the articles are produced or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (r)(3) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (r)(3) of § 319.37–5 and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of the country in which the articles are produced or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of the country in which the articles are produced or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of the country in which the articles are produced or its designated representative or held on account until needed.

One commenter stated that the trust fund requirement adds an economic cost to the production of articles of *Pelargonium* spp. or *Solanum* spp. that does not contribute to the maintenance of plant health and is therefore not justifiable.

The trust fund requirement is common practice under many other APHIS import regulations (e.g., importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff). The trust fund is intended to ensure that the government of the country in which the articles are produced or its designated representative bears the cost of the certification program, rather than U.S. taxpayers. (The government of the country in which the articles are produced is, of course, free to pass this cost on to production sites producing articles of *Pelargonium* spp. or *Solanum* spp. for export to the United States.) Requiring that APHIS subsidize the production of articles of *Pelargonium* spp. or *Solanum* spp. grown in foreign countries for export to the United States would, we believe, be a misallocation of APHIS' limited resources. We are making no changes to the April 2004 interim rule in response to this comment.

Two commenters expressed concern about the administration of the trust fund. One stated that there is no assurance that the governments of countries in which articles of *Pelargonium* spp. or *Solanum* spp. are produced will participate in setting up the trust fund; without such assurance, exporters might not be able to participate due to governmental reluctance. The other asked that APHIS itself, rather than the exporting country, establish and administer the trust fund so that it will cover the APHIS costs without making it uneconomical for exporting companies to continue production.

APHIS does, in fact, establish and administer the trust fund in the certification program established in the April 2004 interim rule. The government of the country in which the articles are produced or its designated representative deposits money into the fund in response to APHIS estimates of costs and in response to actual costs as determined by APHIS. As noted above, the government of the country in which the articles are produced is free to pass this cost on to production sites producing articles of *Pelargonium* spp. or *Solanum* spp. for export to the United States. We are making no changes to the April 2004 interim rule in response to these comments.

In the section of the April 2004 interim rule in which we responded to comments, we described one comment as suggesting that APHIS impose an import bond on all imports of articles of *Pelargonium* spp. or *Solanum* spp. Two commenters on the April 2004 interim rule stated that we should require an import bond; one suggested that an import bond would be appropriate if compensation is not provided for articles of *Pelargonium* spp. or *Solanum* spp. destroyed during eradication efforts.

We continue to believe that the certification program we established in that interim rule is a more direct and more effective means of ensuring that articles of *Pelargonium* spp. and *Solanum* spp. that are offered for importation will not serve as a pathway for the introduction of *R. solanacearum* R3B2.

Other Comments

One commenter recommended that, rather than place restrictions on the importation of articles of *Pelargonium* spp. or *Solanum* spp., we simply prohibit the importation of all nursery stock. We do not believe such an action is necessary or warranted.

One commenter suggested that *R. solanacearum* R3B2 should be removed from the list of select agents in 7 CFR 331.3(a). We continue to believe, based on input from USDA's Agricultural Research Service, Forest Service, and Cooperative State Research, Education, and Extension Service and consultation with the American Phytopathological Society, that *R. solanacearum* R3B2 poses a severe threat to plant health or plant products, and the commenter

provided no evidence to the contrary. In any case, removing *R. solanacearum* R3B2 from that list is beyond the scope of this rulemaking.

One commenter urged APHIS to continue with its review of the nursery stock regulations, to prevent introductions of both *R. solanacearum* R3B2 and other plant pests. We agree that this review is essential to safeguarding plant health, and we published an advance notice of proposed rulemaking soliciting comments on approaches to revising the nursery stock regulations on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).

Three commenters addressed various aspects of the eradication effort that APHIS undertook after the presence of *R. solanacearum* R3B2 was confirmed in the United States in February 2003, including reinstatement procedures for facilities where *R. solanacearum* R3B2 was present, the speed with which the eradication effort was conducted, the treatment of individual greenhouses as production sites, and the fact that APHIS did not pay compensation to the owners of plants destroyed during this eradication effort.

The effort to eradicate *R. solanacearum* R3B2 within the United States was conducted under the authority granted to APHIS in the Plant Protection Act (7 U.S.C. 7714), which states that if the Secretary considers it necessary in order to prevent the dissemination of a plant pest or noxious weed that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant that is moving into or through the United States or interstate, or has moved into or through the United States or interstate, and the Secretary has reason to believe is infested with a plant pest or noxious weed at the time of the movement. The Plant Protection Act further states that if that situation should occur, the Secretary may order the owner of any plant to destroy the plant without cost to the Federal Government and in the manner the Secretary considers appropriate.

The May 2003 and April 2004 interim rules placed restrictions on the importation of articles of *Pelargonium* spp. or *Solanum* spp. in order to address the risk that such importation could introduce *R. solanacearum* R3B2 into the United States; the domestic eradication effort is beyond the scope of this rulemaking.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on May 24, 2004. This rule clarifies certain requirements in the certification program established by the interim rule and amends other requirements to provide additional options. Immediate action is necessary to amend the certification program in order to ensure that its requirements are easily understood and to make the certification program more flexible. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In the April 2004 interim rule, APHIS amended the regulations to establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *R. solanacearum* R3B2 is known to occur. The interim rule prohibited the importation of articles of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur unless the articles are produced in accordance with the certification program. This final rule amends the regulations by modifying some of the requirements of the certification program to make them clearer and more flexible, by providing for the establishment of areas that are free of *R. solanacearum* R3B2 within countries where *R. solanacearum* R3B2 is known to occur, and exempting imported seeds of *Pelargonium* spp. and *Solanum* spp. from all requirements related to *R. solanacearum* R3B2. The requirements of the certification program are designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. This certification program is necessary to prevent the introduction of this bacterial strain into the United States.

The production site certification program impacts approximately 11 different nurseries. Two of these nurseries are located in Guatemala, three in Mexico, one in China, two in Kenya, and three in Costa Rica. The average cost of upgrading these 11 production sites to comply with the production site requirements in the April 2004 interim rule has been estimated at approximately $70,000 per site.[10] However, many of these production sites had already upgraded their facilities due to the outbreak of *R. solanacearum* R3B2 in early 2003. Thus, to the extent that these upgrades fulfill the production site requirements contained in this rule, compliance costs for some production sites would have been lower than this estimate.

Pelargonium (geranium) spp.

Based on growers' receipts, U.S. floriculture and nursery crop sales totaled $14 billion in 2002. Total sales of U.S. geraniums were estimated at $204 million for 2002.[11] The United States imported $44 million worth of cuttings and slips of which geraniums comprised some unknown part.[12] Geraniums are the most popular bedding plant in North America; approximately 20,000 growers cultivate these plants.

APHIS has determined that the 2003 *R. solanacearum* R3B2 outbreak occurred when geranium cuttings arrived from Kenya carrying the *R. solanacearum* R3B2 bacterium. The *R. solanacearum* R3B2 outbreak in 2003 led to the disposal of 1.9 million geraniums; the disposed plants had a total value of approximately $1.5 to $2 million.

Solanum spp.

The genus *Solanum* comprises a large group of both tender and hardy, herbaceous shrubby climbing plants. Several species can be found in North America either growing wild or as decorative plants, but two—potatoes and eggplants—are grown as vegetables. The *R. solanacearum* R3B2 bacterium, which is widely distributed in temperate regions, causes the disease potato brown rot. In 2002, 1.3 million acres of U.S. potatoes were harvested;

[10] Society of American Florists.

[11] Electronic Outlook Report from the Economic Research Service, Floriculture and Nursery Crops Outlook, September 12, 2002, Alberto Jerardo.

[12] World Trade Atlas 2002, U.S. imports of unrooted cuttings and slips of plants, code # 0602100000.

the potato harvest was valued at $3.2 billion, and $123 million worth of U.S. potatoes were exported to the rest of the world.[13] The value of potato fields infected with *R. solanacearum* R3B2 could be drastically reduced if not completely eliminated. The bacterium causes potatoes to have unsightly brown rings in the vegetable, making them worthless for human consumption. Most likely, U.S. producers with fields infected with this bacterium would be required to quarantine their fields and destroy the potatoes to prevent the spread of the disease.

The UK has experienced five outbreaks of potato brown rot that have caused minor impacts to overall potato production.[14] Certain areas in South America have seen potato losses from 5 percent to 100 percent due to potato brown rot. If potato brown rot were to become established in the United States, the potato industry could potentially lose hundreds of millions of dollars due to direct losses and indirect losses from quarantines and diminished export markets.

The April 2004 interim rule allowed imports of articles of *Pelargonium* spp. and *Solanum* spp. to continue as long as the articles are produced in accordance with the certification program requirements in § 319.37–5(r)(3) and are accompanied by a phytosanitary certificate stating that they have been produced in accordance with those requirements. The interim rule helped safeguard U.S. agriculture against the possible introduction of *R. solanacearum* R3B2.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The Small Business Administration (SBA) classifies nursery and tree production businesses as small entities (North American Industry Classification System category 111421) if their annual sales receipts are $750,000 or less. In 2001, 1,691 floriculture operations out of a total of 10,965 operations had sales of $500,000 or more.[15] Therefore, at least 85 percent of all floriculture operations can be classified as small; it is likely that an even higher percentage can be classified as small due to the $250,000 discrepancy.

The costs of complying with the production site certification requirements are not expected to significantly affect costs or revenues of small-entity floriculture operators in the United States. Some portion of the cost of site certification may be passed onto U.S. buyers of geranium cuttings in the form of higher prices, but this effect is expected to be minor.

The interim rule had a negative impact on offshore operations due to the costs involved in complying with the additional nursery site certification requirements. Experts in the industry have estimated that updating the 11 offshore nursery sites cost approximately $770,000 total, or $70,000 per site. However, this final rule makes changes to the production site requirements to allow affected entities some flexibility in meeting them. It is difficult to determine the impact without knowing average revenues generated at these 11 nursery sites.

While the costs for production sites to comply with the requirements resulted in a negative impact on offshore production sites, the requirements help to ensure that future nursery shipments entering the United States are free of *R. solanacearum* R3B2. The 2003 *R. solanacearum* R3B2 outbreak alone cost the floriculture industry $1.5 to $2 million in geranium plant losses. The *R. solanacearum* R3B2 outbreak could have jeopardized not only the entire U.S. geranium industry, which is estimated to be worth $204 million per year, but also the potato industry, which is estimated to be worth $3.2 billion per year, if it had not been contained and eradicated.[16] It is evident that the benefits of certifying offshore production sites that produce *Pelargonium* spp. and *Solanum* spp. outweigh the costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

[13] National Agricultural Statistical Service (NASS) data on U.S. potato production, 2002; Foreign Agricultural Service data on potato exports, 2002.

[14] British Department of Environment, Food and Rural Affairs, Service Delivery Unit, Plant Health Division.

[15] NASS, Agricultural Statistics Board, U.S. Department of Agriculture, 2001 Floriculture Crops.

[16] Electronic Outlook Report from the Economic Service, Floriculture and Nursery Crops Outlook, September 12th, 2002, Alberto Jerardo; and NASS data U.S. potato production, 2002, along with FAS data on potato exports 2002.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 69 FR 21941–21947 on April 23, 2004, is adopted as a final rule with the following changes:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37–5 is amended as follows:

■ a. By revising paragraph (r), introductory text, to read as set forth below.

■ b. By revising paragraph (r)(2) to read as set forth below.

■ c. In paragraph (r)(3), in the introductory text, by adding the words ''or area'' after the word ''country.''

■ d. By revising the second sentence of paragraph (r)(3)(iii) to read as set forth below.

■ e. By revising paragraphs (r)(3)(iv) and (r)(3)(v) to read as set forth below.

■ f. In paragraph (r)(3)(vii), by removing the words ''must not come in contact with soil, and soil may not be used as a growing medium'' and adding the words ''must not come in contact with growing media that could transmit *R. solanacearum* race 3 biovar 2 and must be grown in an APHIS-approved growing medium'' in their place.

■ g. In paragraph (r)(3)(xii), by removing the word ''presence'' and adding the word ''introduction'' in its place.

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(r) Any restricted article of *Pelargonium* spp. or *Solanum* spp. presented for importation into the United States may not be imported unless it meets the requirements of this paragraph (r). Seeds are not subject to the requirements of this paragraph (r).

(1) * * *

(2) (i) For any article of *Pelargonium* spp. or *Solanum* spp. that does not meet the requirements of paragraph (r)(1) of this section and is from a country where *Ralstonia solanacearum* race 3 biovar 2 is not known to occur, the phytosanitary certificate of inspection required by § 319.37–4 must contain an additional declaration that states ''*Ralstonia solanacearum* race 3 biovar 2 is not known to occur in the country or area of origin''; *Provided,* that this additional declaration is not required on the phytosanitary certificate of inspection accompanying articles of *Solanum* spp. from Canada that do not meet the

requirements of paragraph (r)(1) of this section.

(ii) For any article of *Pelargonium* spp. or *Solanum* spp. that does not meet the requirements of paragraph (r)(1) of this section and is from an area that has been established as free of *Ralstonia solanacearum* race 3 biovar 2 in accordance with International Standards for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas,'' which is incorporated by reference at § 300.5 of this chapter, the phytosanitary certificate required by § 319.37–4 must contain an additional declaration that states ''This article is from an area that has been established as free of *Ralstonia solanacearum* race 3 biovar 2.''

(3) * * *

(iii) * * * Only articles of *Pelargonium* spp. and *Solanum* spp. from a group of articles that has been tested according to an APHIS-approved testing protocol with negative results for the presence of *R. solanacearum* race 3 biovar 2 may be used in production and export. * * *

(iv) Each greenhouse on the production site must be constructed in a manner that ensures that runoff water from areas surrounding the greenhouses cannot enter the greenhouses. The greenhouses must be surrounded by a 1-meter buffer that is sloped so that water drains away from the greenhouses.

(v) Dicotyledonous weeds must be controlled both within each greenhouse on the production site and around it. The greenhouses on the production site and the 1-meter buffer surrounding them must be free of dicotyledonous weeds.

* * * * *

Done in Washington, DC, this 18th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–21168 Filed 10–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2005–22047; Airspace Docket No. 05-ANM–10

RIN 2120–AA66

Revision of VOR Federal Airway V–343; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends Federal Airway V–343 from the Bozeman, MT, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) to the initial approach fix for the Area Navigation (RNAV) runway 15 approach to the Bert Mooney Airport (BTM), MT. Specifically, this action will enhance the management of air traffic arrivals at BTM.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to revise VOR Federal Airway V–343 by extending the airway to the initial approach for the BTM airport (70 FR 49222). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that published in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to revise VOR Federal Airway V–343 by extending the airway from the Bozeman, MT, VORTAC to the initial approach fix for the RNAV runway 15 approach to the BTM, MT.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–343 [Revised]

From Dubios, ID; Bozeman, MT, INT Bozeman, MT, 302° and Whitehall, MT, 342° Radials.

* * * * *

Issued in Washington, DC, October 17, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–21144 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 335 and 340

[Docket No. 050406093–5259–02]

RIN 0625–AA67

Imports of Certain Worsted Wool Fabric: Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000

ACTION: Final rule.

SUMMARY: The Department of Commerce publishes this final rule to adopt, without change, an interim final rule that implemented tariff rate quotas (TRQ) for a limited quantity of worsted wool fabrics pursuant to Title V of the Trade and Development Act of 2000 (''the Act'') as amended by the Trade Act of 2002 and the Miscellaneous Trade Act of 2004, (Pub. L. 108–429). Section 501(e) of the Act requires the President to fairly allocate TRQs on the import of certain worsted wool fabric. Section 504(b) of the Act authorizes the President to modify the limitations on worsted wool fabric imports under TRQs. The President has delegated to the Secretary of Commerce the authority to allocate the quantity of imports under the TRQs (specifically for wool products under HTS headings, 9902.51.11 and 9902.51.12) and to determine whether the limitations on the quantity of imports under the TRQs should be modified. This rule is necessary to implement the amendment to the Act included in the Miscellaneous Trade Act of 2004, (Pub. L. 108–429), which specifies which HTS categories may be allocated as TRQs and which eliminates Commerce's authority to modify these quotas.

DATES: This final rule is effective October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Background

The Act created Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11 and HTS heading 9902.51.12, which establish two TRQs, providing for temporary reductions for three years in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns, the reduction in duty is limited to 2,500,000 square meter equivalents or such other quantity proclaimed by the President; and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less, the reduction is limited to 1,500,000 square meter equivalents or such other quantity proclaimed by the President, respectively. The Act required that the TRQs be allocated. More specifically, the President must ensure that the TRQs are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year.

The Act required that the President annually consider requests by U.S. manufacturers of certain worsted wool apparel to modify the limitation on the quantity of fabric that may be imported under the TRQs, and granted the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, the President must consider specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel.

In Presidential Proclamation 7383, of December 1, 2000, the President authorized the Secretary of Commerce: (1) To allocate the imports of worsted wool fabrics under the TRQs; (2) to annually consider requests from domestic manufacturers of worsted wool apparel to modify the limitation on the quantity of worsted wool fabrics that may be imported under the TRQs; (3) to determine whether the limitations on the quantity of imports of worsted wool fabrics under the TRQs should be modified and to recommend to the President that appropriate modifications be made; and (4) to issue regulations to implement relevant provisions of the Act.

On December 3, 2004, the Act was amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429. The amendment altered the HTS categories of worsted wool eligible for the TRQs under the Act. Specifically, the amendment renumbered HTS heading 9902.51.12 to HTS heading 9902.51.15. The Miscellaneous Trade Act of 2004 also increased to 5 million square meters from 3.5 million square meters the TRQ for worsted wool fabrics with average fiber diameters of 18.5 microns or less (HTS 9902.51.15, previously numbered HTS 9902.51.12); and increased to 5.5 million square meters from 4.5 million square meters the TRQ for the worsted wool fabrics with average fiber diameters greater than 18.5 microns (9902.51.11).

The amendment also authorized Commerce to allocate a new HTS category, HTS 9902.51.16. This HTS refers to worsted wool fabric with average fiber diameters of 18.5 microns or less. The amendment further specified that HTS 9902.51.16 is for worsted wool for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States.

Finally, the Miscellaneous Trade Act of 2004, Public Law 108–429, repealed Commerce's authorization to determine whether the limitations on the quantity of imports of worsted wool fabrics under the TRQs should be modified and to recommend to the President that appropriate modifications be made.

On May 16, 2005, the International Trade Administration published an Interim Final Rule that implemented the new HTS categories and allocation system and that removed Commerce's authorization to modify the limitation on the quantity of imports of worsted wool fabrics. The interim regulations were effective upon publication to allow TRQ recipients to import their products under the new HTS categories and allocation system.

Public Comments

While the interim regulations became effective on May 16, 2005, the Department of Commerce solicited comments on the interim regulations and expressed particular interest in comments concerning any impact the regulations might have on small or medium sized businesses. The public comment period closed on July 15, 2005. The Department did not receive any comments on the interim regulations.

Action Being Taken by the Department of Commerce

The Department of Commerce is adopting without change the interim final rule that became effective May 16, 2005. Title 15, Part 335 of the Code of Federal Regulations sets forth regulations regarding the issuance and effect of licenses for the allocation of worsted wool fabric under the tariff rate quotas established by Section 501 of the Act. Part 340 of the same title is removed.

Classification

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement

subject to the Paperwork Reduction Act (PRA), which has received approval by OMB under control number 0625–0240. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: October 18, 2005.

James C. Leonard III,

Deputy Assistant Secretary for Textiles and Apparel.

PART 335—IMPORTS OF WORSTED WOOL FABRICS AND PART 340—MODIFICATION OF THE TARIFF RATE QUOTA LIMITATION ON WORSTED WOOL FABRIC IMPORTS

■ Accordingly, the interim rule that amends 15 CFR part 335 and removes 15 CFR part 340, which was published at 70 FR 25774 on May 16, 2005, is adopted as final rule without change.

[FR Doc. 05–21215 Filed 10–21–05; 8:45 am]

BILLING CODE 3510–DS–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AG23

Deemed Duration of Marriage for Widows/Widowers and Removal of Restriction on Benefits to Children of Military Parents Overseas

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are issuing these final rules to reflect in our regulations changes to the Social Security Act (the Act) made by two provisions in the Social Security Protection Act of 2004 (SSPA), enacted on March 2, 2004. One provision added a new situation in which the 9-month duration-of-marriage requirement for surviving spouses under title II of the Act is deemed to have been met. The other provision removed a restriction against payment of Supplemental Security Income (SSI) benefits, under title XVI of the Act, to certain blind or disabled children who were not eligible for SSI benefits the month before their military parents reported for duty outside the United States.

DATES: These regulations are effective October 24, 2005.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (i.e., Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Prior to enactment of section 414 of the SSPA, Public Law 108–203, if an applicant for surviving spouse's benefits did not meet the 9-month duration-of-marriage requirement or alternative requirements, the 9-month requirement would be deemed to be met if:

- The insured's death was accidental;
- The insured's death occurred in the line of duty while he or she was a member of a uniformed service on active duty; or
- The surviving spouse was previously married to the insured for at least 9 months, the previous marriage ended in divorce, and the surviving spouse had remarried the insured prior to the insured's death.

Section 414 of the SSPA amended sections 216(c) and (g) of the Act to add a new situation in which the 9-month duration-of-marriage requirement is deemed met. The requirement will be deemed met if:

- The insured had been married prior to the marriage to the surviving spouse;
- The prior spouse was institutionalized during the marriage to the insured, due to mental incompetence or similar incapacity;
- We determine, based on satisfactory evidence, that during this institutionalization the insured would have divorced the prior spouse and married the surviving spouse but the divorce would have been unlawful in the State of the insured's domicile because of the institutionalization;
- The prior spouse remained institutionalized up until the time of his or her death; and
- The insured married the surviving spouse within 60 days after the prior spouse's death.

Prior to enactment of section 434 of the SSPA, section 1614(a)(1)(B)(ii) of the Act included within the definition of a blind or disabled individual, for purposes of SSI eligibility and payment under title XVI, a blind or disabled child who lived outside the United States if the child:

- Was a citizen of the United States;
- Was living with a parent and that parent was a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States; and
- Was eligible for an SSI benefit for the month before the parent reported for such assignment.

Section 434 of the SSPA amended section 1614(a)(1)(B)(ii) by eliminating the requirement that the child must have been eligible for an SSI benefit for the month before the parent reported for the military assignment.

Explanation of Changes

We are revising § 404.335 to extend title II benefits to a surviving spouse who would have met the duration-of-marriage requirement to the insured, except that as determined based on evidence satisfactory to the Agency, it was unlawful under State law for the insured to divorce the prior spouse by reason of the prior spouse's institutionalization because of mental incompetence or similar incapacity. The prior spouse must have been institutionalized during the marriage to the insured and remained institutionalized until the time of his or her death, and the insured must have married the surviving spouse within 60 days after the prior spouse's death. We also are revising the last sentence of § 404.357 to update the reference to the revised paragraphs in § 404.335 and clarify that this new situation where the duration-of-marriage requirement is deemed to have been met does not apply to stepchildren.

We are revising § 416.216 by amending paragraph (a) to include a definition of the regulatory term ''overseas.'' The amended paragraph (a) clarifies that by overseas we mean ''outside the United States.'' We are revising paragraph (a)(3) to substitute the newly defined term ''overseas'' for ''outside the United States.'' The relevant statutory section uses the term ''outside the United States.'' The regulation already uses ''overseas'' several times but text we are removing from the section includes the term ''outside the United States.'' We are removing paragraph (a)(4), which

contains the requirement that a blind or disabled child who is a United States citizen, living with a parent who is a member of the U.S. Armed Forces assigned to permanent duty ashore outside the U.S., must have been eligible for an SSI benefit for the month before the parent reported for the assignment, in order to be eligible for a payment of SSI benefits while outside the U.S.

Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5) and 1631(d)(1) of the Act, 42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the promulgation of our regulations. The APA provides exceptions to its prior notice and public comments procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures. Good cause exists because these regulations merely revise our rules on title II widows/widowers benefits and title XVI blind or disabled children's benefits to reflect, without exercise of discretion, the provisions in sections 414 and 434 of the SSPA that we have been following operationally since enactment of the provisions on March 2, 2004. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are revising our rules on title II benefits for widows/widowers and title XVI benefits for blind or disabled children to reflect current law. Without these changes, our rules will not reflect current law and thus may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no additional reporting or record keeping requirements requiring OMB clearances.

(Catalog of Federal Domestic Assistance Program Nos. 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs; Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 25, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we amend subpart D of part 404 and subpart B of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

■ 1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

■ 2. Amend § 404.335 by revising paragraph (a)(2) to read as follows:

§ 404.335 How do I become entitled to widow's or widower's benefits?

* * * * *

(a) * * *

(2) Your relationship to the insured as a wife or husband did not last 9 months before the insured died, but you meet one of the conditions in paragraphs (a)(2)(i) through (iv) of this section.

(i) At the time of your marriage the insured was reasonably expected to live for 9 months, and the death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect, if it was the result of bodily injuries received from violent and external causes, and if, as a direct result of these injuries, death occurred not later than 3 months after the day on which the bodily injuries were received. An intentional and voluntary suicide will not be considered an accidental death.

(ii) At the time of your marriage the insured was reasonably expected to live for 9 months, and the death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1019.

(iii) At the time of your marriage the insured was reasonably expected to live for 9 months, and you had been previously married to the insured for at least 9 months.

(iv) The insured had been married prior to his or her marriage to you and the prior spouse was institutionalized during the marriage to the insured due to mental incompetence or similar incapacity. During the period of the prior spouse's institutionalization, the insured, as determined based on evidence satisfactory to the Agency, would have divorced the prior spouse and married you, but the insured did not do so because the divorce would have been unlawful, by reason of the institutionalization, under the laws of the State in which the insured was domiciled at the time. Additionally, the prior spouse must have remained institutionalized up to the time of his or her death and the insured must have married you within 60 days after the prior spouse's death.

* * * * *

■ 3. Amend § 404.357 by revising the last sentence to read as follows:

§ 404.357 Who is the insured's stepchild.

* * * This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under one of the conditions described in § 404.335(a)(2)(i)–(iii).

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

■ 4. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

■ 5. Amend § 416.216 by revising paragraph (a) to read as follows:

§ 416.216 You are a child of armed forces personnel living overseas.

(a) *General Rule.* For purposes of this part, *overseas* means any location outside the United States as defined in § 416.215; i.e., the 50 States, the District of Columbia and the Northern Mariana Islands. You may be eligible for SSI benefits if you live overseas and if—

(1) You are a child as described in § 416.1856;

(2) You are a citizen of the United States; and

(3) You are living with a parent as described in § 416.1881 who is a member of the armed forces of the United States assigned to permanent duty ashore overseas.

* * * * *

[FR Doc. 05–21117 Filed 10–21–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4874–C–09]

RIN 2577–AC51

Revisions to the Public Housing Operating Fund Program; Correction to Formula Implementation Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects HUD's final rule published on September 19, 2005, that implements revisions to the public housing Operating Fund Program. The final rule includes dates from the proposed rule that assumed both an initial implementation of the revised formula in fiscal year (FY) 2006 and a one-year period for PHAs to transition to the new formula. In converting the rule from a proposed to final rule, HUD unintentionally failed to revise certain dates to reflect the updated schedule for implementation of the revised formula. Accordingly, the September 19, 2005, final rule inadvertently denies PHAs the one-year transition period. This document corrects the September 19, 2005, final rule to provide that the revised allocation formula will be implemented for calendar year 2007, and adjusts the related dates specified in the rule to reflect the corrected implementation date.

EFFECTIVE DATE: The final rule is effective on November 18, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hanson, Public Housing Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410; telephone (202) 475–7949 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 2005, (70 FR 54983), HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990, to provide a new formula for distributing operating subsidy to public housing agencies (PHAs) and establish requirements for PHAs to convert to asset management. More detailed information about this rule can be found in the preamble to the September 19, 2005, final rule.

II. This Document

The September 19, 2005, final rule establishes several requirements and determinations connected to the calendar year in which the distribution of operating subsidies will be made. Some of the dates in the final rule were carried over from the proposed rule and assumed both an initial implementation of the revised formula in FY2006, and a one-year transition period prior to implementation of the new formula.

Given the timing of publication and the effective date of the final rule, initial implementation of the revised formula must be deferred to calendar year 2007 in order to provide PHAs with the necessary one year transition period. However, in converting this rule from a proposed rule to a final rule, HUD inadvertently failed to revise certain dates to reflect the updated schedule for implementation of the new formula, and unintentionally denied PHAs the one-year transition period.

This document corrects certain provisions in the September 19, 2005, final rule to appropriately reflect initial implementation of the revised Operating Fund formula in calendar year 2007. The corrections made by this document are necessary to assist PHAs in proper budgetary planning and to bring their policies and procedures into compliance with the new formula requirements. The effective date of the rule remains November 18, 2005, and all other dates contained in the final rule that do not affect the new formula allocation of operating subsidies are unchanged.

The following section of this document describes the most significant corrections being made to the September 19, 2005, final rule.

III. Corrections to the September 19, 2005, Final Rule

Revised subpart F of 24 CFR part 990 establishes procedures to assist PHAs in transitioning to the new funding levels under the new Operating Fund formula. As provided in § 990.225 of the final rule, the determination of the amount and period of the transition funding will be based on the difference in subsidy levels between the revised formula and the formula in effect prior to implementation of the final rule. Differences in subsidy levels will be calculated using FY 2004 data.

1. *Transition Funding.* Under §§ 990.230 and 990.235 of the final rule, PHAs that experience a decrease or increase in operating subsidy will have that decrease phased-in over a specified number of years following the effective date of the final rule (November 18, 2005). The phase-in period is five years for subsidy reductions and two years for increases in operating subsidies. By specifying the date of November 18, 2005, the final rule incorrectly connects the first year of the phased-in reduction to initial formula implementation in FY 2006. This document corrects §§ 990.230 and 990.235 by removing references to specific dates.

2. *Discontinuation of subsidy reduction as a result of conversion to asset management (''stop-loss'' provision).* As noted above, the final rule provides that phased-in reductions in operating subsidy will be discontinued if the PHA can demonstrate successful conversion to the asset management requirements contained in revised subpart H of the part 990 regulations. HUD will discontinue the reduction in accordance

with the corrected ''stop-loss'' schedule set forth in § 990.230 of the final rule that reflects initial formula implementation in calendar year 2007. For example, the first demonstration date in the corrected schedule is October 1, 2006, as opposed to the October 1, 2005, date incorrectly provided in the September 19, 2005, final rule.

■ Accordingly, FR Doc. 05–18624, Revisions to the Public Housing Operating Fund Program; Final Rule, (FR–4874–F–08), published in the **Federal Register** on September 19, 2005 (70 FR 54984), is corrected as follows:

PART 990—[AMENDED]

■ 1. On page 55003, in the second column, correct § 990.195(c) to read as follows:

§ 990.195 Calculation of formula income.

* * * * *

(c) *Frozen at 2004 level.* After a PHA's formula income is calculated as described in paragraph (a) of this section, it will not be recalculated or inflated for fiscal years 2007 through 2009, unless a PHA can show a severe local economic hardship that is impacting the PHA's ability to maintain some semblance of its formula income (see subpart G of this part—Appeals). A PHA's formula income may be recalculated if the PHA appeals to HUD for an adjustment in its formula.

* * * * *

■ 2. In § 990.225, on page 55004, in the second column, correct the first sentence to read as follows:

§ 990.225 Transition determination.

The determination of the amount and period of the transition funding shall be based on the difference in subsidy levels between the formula set forth in this part and the formula in effect prior to implementation of the formula set forth in this part. * * *

* * * * *

■ 3. In § 990.230, on page 55004, in the third column, correct paragraphs (a), (b), (c), and (e) to read as follows:

§ 990.230 PHAs that will experience a subsidy reduction.

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

(1) 24 percent of the difference between the two funding levels in the first year following implementation of the formula contained in this part;

(2) 43 percent of the difference between the two funding levels in the second year following implementation of the formula contained in this part;

(3) 62 percent of the difference between the two levels in the third year following implementation of the formula contained in this part; and

(4) 81 percent of the difference between the two levels in the fourth year following implementation of the formula contained in this part.

(b) The full amount of the reduction in the operating subsidy level shall be realized in the fifth year following implementation of the formula contained in this part.

(c) For example, a PHA has a subsidy reduction from $1 million under the formula in effect prior to implementation of the formula contained in this part to $900,000 under the formula contained in this part using FY 2004 data. The difference would be calculated at $100,000 ($1 million − $900,000 = $100,000). In the first year, the subsidy reduction would be limited to $24,000 (24 percent of the difference). Thus, the PHA will receive an operating subsidy amount of this rule plus a transition-funding amount of $76,000 (the $100,000 difference between the two subsidy amounts minus the $24,000 reduction limit).

* * * * *

(e) The schedule of reductions for a PHA that will experience a reduction in subsidy is reflected in the table below.

Funding period	Demonstration dated by	Reduction limited to
Prior to year 1	October 1, 2006	5 percent of the difference between the two funding levels.
Year 1	October 1, 2007	24 percent of the difference.
Year 2	October 1, 2008	43 percent of the difference.
Year 3	October 1, 2009	62 percent of the difference.
Year 4	October 1, 2010	81 percent of the difference.
Year 5	October 1, 2011	Full reduction reached.

* * * * *

■ 4. In § 990.235, on page 55005, in the first and second columns, correct paragraphs (a), (b), and (c) to read as follows:

§ 990.235 PHAs that will experience a subsidy increase.

(a) For PHAs that will experience a gain in their operating subsidy, as determined in § 990.225, such increases will have a limit of 50 percent of the difference between the two funding levels in the first year following implementation of the formula contained in this part.

(b) The full amount of the increase in the operating subsidy level shall be realized in the second year following implementation of the formula contained in this part.

(c) For example, a PHA's subsidy increased from $900,000 under the formula in effect prior to implementation of the formula contained in this part to $1 million under the formula contained in this part using FY 2004 data. The difference would be calculated at $100,000 ($1 million − $900,000 = $100,000). In the first year, the subsidy increase would be limited to $50,000 (50 percent of the difference). Thus, in this example the PHA will receive the operating subsidy amount of this rule minus a transition-funding amount of $50,000 (the $100,000 difference between the two subsidy amounts minus the $50,000 transition amount).

* * * * *

Dated: October 19, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 05–21268 Filed 10–21–05; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA73

TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule partially implements the TRICARE ''sub-acute and long-term care program reform'' enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002, specifically: Establishment of ''an effective, efficient, and integrated sub-acute care benefits program,'' with skilled nursing facility (SNF) and home health care benefits modeled after those of the Medicare program; adoption of Medicare payment methods for skilled nursing facility, home health care, and certain other institutional health care providers; adoption of Medicare rules on balance billing of beneficiaries, prohibiting it by institutional providers and limiting it by non-institutional providers; and change in the statutory exclusion of coverage for custodial and domiciliary care.

DATES: *Effective Dates:* This rule is effective August 1, 2003, except the amendments to § 199.14(h), which are effective June 1, 2004.

ADDRESSES: Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011–9066.

FOR FURTHER INFORMATION CONTACT: For payments to Skilled Nursing Facilities and Skilled Nursing Facility (SNF) services, Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3801. For Home Health Care (HHC) benefits and payment methods, David E. Bennett, TRICARE Management Activity, Medical Benefits and Reimbursement Systems, telephone (303) 676–3494. For payments for clinical laboratory and certain other services in hospital outpatient departments and emergency departments and balance billing limits, Stan Regensberg, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742. For custodial care issues, Mike Kottyan, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3520.

SUPPLEMENTARY INFORMATION:

I. Overview

In the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Pub. L. 107–107 (December 28, 2001), Congress enacted several reforms relating to TRICARE coverage and payment methods for skilled nursing and home health care services. The statutory ''Sub-Acute and Long-Term Care Program Reform'' under section 701 of this Act added a new 10 U.S.C. 1074j, which provides in pertinent part:

§ 1074j Sub-acute care program.

(a) Establishment.—The Secretary of Defense shall establish an effective, efficient, and integrated sub-acute care benefits program under this chapter. * * *

(b) Benefits.—(1) The program shall include a uniform skilled nursing facility benefit that shall be provided in the same manner and under the conditions described in Section 1861(h) and (i) of the Social Security Act (42 U.S.C. 1395x(h) and (i)), except that the limitation on the number of days of coverage under Section 1812(a) and (b) of such Act (42 U.S.C. 1395d(a) and (b)) shall not be applicable under the program. Skilled nursing facility care for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

* * * * *

(3) The program shall include a comprehensive, part-time or intermittent home health care benefit that shall be provided in the manner and under the conditions described in Section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

In addition to these requirements that TRICARE establish an integrated sub-acute care program consisting of skilled nursing facility and home health care services modeled after the Medicare program, Congress also, in section 707 of NDAA–02, changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods for institutional care ''may be'' determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods ''shall be'' so determined. This amendment is effective 90 days after the date of enactment.

A third Congressional action in NDAA–02, also in Section 707, is the statutory codification of existing TRICARE policy—modeled after Medicare—that institutional providers are not permitted to balance bill beneficiaries for charges above the TRICARE payment amount and that non-institutional providers may not balance bill in excess of 15 percent over the TRICARE Maximum Allowable Charge.

A fourth component of this reform program (in Section 701(c)) is the narrowing of the regulatory definition of custodial care, which previously was statutorily excluded but not defined, by the adoption of the new statutory definition of ''custodial care'' that has the effect of eliminating current program restrictions on paying for certain medically necessary custodial care. The new statutory definition of domiciliary care is consistent with the previous regulatory definition, and no changes are required.

This final rule implements these statutory requirements. We are adopting for TRICARE a skilled nursing facility (SNF) benefit similar to Medicare's, but as specified in the statute, without Medicare's day limits. We are also adopting Medicare's prospective payment method for SNF care. Similarly, we are adopting the Medicare benefit structure and payment method for home health care (HHC) services. We are applying to SNF and HHC providers the statutory prohibition against balance billing. In addition, we are incorporating the new statutory definitions of ''custodial care'' and ''domiciliary care.'' Finally, this rule also provides clarification of existing payment policies for laboratory services including clinical laboratory; rehabilitation therapy services; radiology services; diagnostic services; ambulance services; durable medical equipment (DME) and supplies; oxygen and related supplies; drugs administered other than oral method; all professional provider services that are provided in an emergency room, clinic, hospital outpatient departments, etc.; and routine venipuncture in hospital outpatient and emergency departments that were adopted under the allowable charge methodology under 32 CFR 199.14.

We note that the series of sub-acute and long-term care program reforms adopted by Congress in NDAA–02 included several parts that are not a part of implementation in this final rule. Most significant are: repeal of the Case Management Program under 10 U.S.C. 1079(a)(17) (repealed—along with several other related enactments—by Section 701(g)(2) of NDAA–02); continuation of the Case Management Program for certain beneficiaries currently covered by it (Section 701(d)); and establishment of a new program of extended benefits for disabled family members of active duty service members (Section 701(b)). These and several other related statutory changes are being implemented through separate regulatory changes.

Finally, we note that Congress included as Section 8101 of the DoD 2002 Appropriations Act, a general provision identical to a provision included in the 2000 (Section 8118) and 2001 (Section 8100) Appropriations Acts concerning implementation of the case management program under 10 U.S.C. 1079(a)(17). Although Sections 8118 and 8100 of the 2000 and 2001 Appropriations Acts were repealed by Section 701(g)(1)(B) and (C) of NDAA–02, the same provision was reenacted in the 2002 Appropriations Act. By its terms, Section 8101 of the DoD 2002 Appropriations Act, exclusively addresses implementation of a program (the case management program under 10 U.S.C. 1079(a)(17)) that has now been repealed. Thus, we consider Section 8101 as not affecting implementation of the sub-acute and long-term care reform program adopted by Congress in NDAA–02.

The program reforms adopted by Congress and implemented in this final rule take major steps toward achieving the Congressional objective of an effective, efficient, and integrated sub-acute care benefits program.

II. Skilled Nursing Facility Benefits

As noted above, 10 U.S.C. 1074j requires TRICARE to include a skilled nursing facility benefit that shall for the most part be provided in the manner and under the conditions described under Medicare. As a result, TRICARE is adopting Medicare's three-day prior-hospitalization requirement for coverage of a SNF admission. Accordingly, for a SNF admission to be covered under TRICARE, the beneficiary must have a qualifying hospital stay (meaning an inpatient hospital stay), of not less than three consecutive days before the beneficiary is discharged from the hospital. The beneficiary must enter the SNF within 30 days after discharge from the hospital or within such time as it would be medically appropriate to begin an active course of treatment where the individual's condition is such that SNF care would not be medically appropriate within 30 days after discharge from a hospital. The skilled services must be for a medical condition that was either treated during the qualifying three-day hospital stay, or started while the beneficiary was already receiving covered SNF care. Additionally, an individual shall be deemed not to have been discharged from a SNF, if within 30 days after discharge from a SNF, the individual is again admitted to the same or a different SNF. These coverage requirements are the same as applied under Medicare. We are not, however, adopting Medicare's 100-day limit on SNF services. Consistent with the statute, SNF coverage for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

III. Payments for Skilled Nursing Facility Services

TRICARE had not reformed payment methods applicable to SNFs due to the very small volume of SNF services paid for by TRICARE. The volume of such services is now expected to increase significantly because of the Congressional action in 2000 reinstating TRICARE coverage secondary to Medicare for Medicare-eligible DoD health care beneficiaries (Section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398). Coincident with Congressional action in directing adoption of Medicare payment methods for institutional providers, we have undertaken a review of the Medicare payment method and rates for SNF care under Section 1888(e) of the Social Security Act (42 U.S.C. 1395yy) and 42 CFR Part 413, subpart J. That review and assessment have convinced us that adoption of Medicare SNF payment methods and rates is not only required by law, but also fair, feasible, practicable, and appropriate.

Medicare implemented its per diem Prospective Payment System (PPS) for SNF care covering all costs (routine, ancillary and capital) of Medicare-covered SNF services as of July 1, 1998. The Medicare payment rates are based upon resident assessments. All Medicare-certified SNFs are required to conduct assessments on residents using a standardized assessment tool, called the Minimum Data Set (MDS). Medicare then uses information from this assessment to categorize SNF patients into major categories, such as: (1) Rehabilitation; (2) Extensive Services; (3) Special Care; (4) Clinically Complex; (5) Impaired Cognition; (6) Behavior Problems; and (7) Reduced Physical Function. This is done using the Resource Utilization Group (RUG)–III grouper. The RUG–III grouper is a computer program that converts resident specific assessment data into a case-mix classification. In classifying patients into groups based upon their clinical and functional characteristics, the grouper further subdivides each of these major categories resulting in specific patient RUGs.

For each RUG, the Medicare SNF per diem payment is calculated as the sum of three parts—the nursing component, the therapy component and the non-case-mix component. Under the nursing and therapy components of the payment rate, each of RUG carries a uniquely assigned relative weight factor. This relative weight factor, or case mix index, represents a relative index or resource consumption. Resource-intensive patients are assigned to a RUG that carries a higher relative weight factor. This RUG-specific relative weight factor is multiplied by the applicable nursing and therapy base rates (which vary depending on whether the SNF is urban or rural) to develop the nursing and therapy components of the per diem payment rate. These two components are then added to the non-case-mix adjusted component resulting in the PPS per diem payment rate.

A key part of the Medicare SNF payment system is the use of the MDS to classify SNF residents into one of the RUG groups. An important issue is whether the RUG–III classification system used by Medicare to classify patients into the RUG groups would be practicable for the TRICARE SNF benefit. We think that it would be practicable. Much of the SNF care for which TRICARE will be paying is as second payer to Medicare for the same patient. Even for non-Medicare-eligible patients (e.g., most patients under age 65), the characteristics recognized by the RUG–III system would be equally applicable. In this regard, we note that more than ten states have decided to use the RUG–III system to classify Medicaid patients into RUGs and several other states are currently in the developmental stages of implementing the RUG–III system. This reflects a broad view that the MDS and RUGs are appropriate for non-Medicare SNF residents. In our review and discussions, we could not identify any significant barriers to the use of the RUG–III system to classify TRICARE patients.

One implementation issue that we have identified related to classification concerns the timing of resident assessments. The Medicare SNF payment system requires periodic patient assessments. The Centers for Medicare and Medicaid Services (CMS) requires that SNF patients be assessed on days 5, 14, 30, 60, and 90, as well as to be reassessed if there are status changes between these periodic assessments. We have considered the level of assessment required after 100 days when TRICARE becomes primary payer for patients whose SNF care must continue beyond the Medicare benefit limit. We believe continuing to assess patients every 30 days would be consistent with Medicare's practice of skilled authorization.

A second implementation issue concerns the use of MDS for neonates

and very young children. The MDS was not designed for very young children. As a result, we believe that children under ten should not be assessed using the MDS. We will review the methods used by Medicaid programs and may adopt one of their assessment methods at a later time. Until then, the allowed charge for children under age ten in a SNF will continue to be the billed charge or negotiated rates.

We have also considered whether the Medicare SNF payment rates and weights are appropriate for TRICARE. We believe they are. For some of the payment methods TRICARE has adopted for non-SNF providers that are based on the Medicare's system, we have developed DoD-specific weights and rates. In some, such as for physician payments, we implemented our own phase-in process, but have now reached comparability with Medicare. In the case of SNF PPS, the Medicare weights and rates were developed to be used nationally—like TRICARE—thus, we have no special State considerations that some Medicaid programs would have. In addition, the TRICARE population group that will be the primary user of SNF services and the Medicare population group are quite similar. Thus, we believe that there is no reason why the Medicare weights and rates would not be appropriate to use. However, we will carefully monitor the TRICARE SNF patient characteristics to ensure that the weights and rates are appropriate. If necessary, the weights and rates could be modified after one or more years of experience.

Based on all of these considerations and the statutory requirements, the Department is adopting for TRICARE the Medicare payment methods and rates, including MDS assessments, RUG–III classifications, and Medicare weights and per diem rates. For patient stays longer than 90 days, MDS assessments would be required every 30 days.

In adopting the Medicare's SNF payment methodology, we are also incorporating into our rule a provision that has been in the TRICARE Operations Manual requiring that TRICARE-eligible SNFs are required to be Medicare-certified institutions. We believe this policy facilitates assurance of quality of care and is consistent with the payment approach we are adopting. For pediatric SNFs, TRICARE will accept Medicaid certification in lieu of the Medicare certification as the pediatric SNFs might choose not to apply for Medicare certification and the Medicaid certification standards are quite similar to the Medicare certification standards.

For overseas, the SNF PPS will be applicable to those areas as it applies under Medicare.

On July 7, 2003, DoD published a notice (68 FR 40251) to announce the effective and implementation date for the new SNF benefit provisions and SNF PPS. The notice established that the new SNF benefit provisions and SNF PPS is effective for SNF admissions on or after August 1, 2003.

IV. Home Health Care Benefits

Home health agencies (HHAs) are recognized as authorized providers under TRICARE, but payment only extended to services rendered by otherwise authorized TRICARE individual professional providers, such as registered nurses, physical and occupational therapists, and speech pathologists. Coverage of services provided by home health aides and medical social workers were not allowed except under case management and the hospice benefit. Payment is also extended under the TRICARE-allowable charge methodology for medical supplies that are essential in enabling HHA professional staff to effectively carry out physician ordered treatment of the beneficiary's illness or injury. Unlike Medicare, TRICARE required HHAs to have either Community Health Accreditation Program or Joint Commission on the Accreditation of Healthcare Organizations accreditation to qualify as network providers. These certification requirements have been changed to make them consistent with those of Medicare in order to effectively accommodate adoption of the new HHA prospective payment system, i.e., to require Medicare certification/approval for provider authorization status under TRICARE.

Medicare's home health benefit structure and conditions for coverage are being adopted coincident with implementation of the new prospective payment system including those provisions under Sections 1861(m), 1861(o), and 1891 of the Social Security Act and 42 CFR part 484. In general, coverage extends to part-time or intermittent skilled nursing care and home health aide services from qualified providers. The specific benefit structure and conditions for coverage are set forth in the new Section 199.4(e)(21) of the regulation.

In adopting this new benefit structure for TRICARE, we note the potential need for some transition time or other accommodation for some patients currently receiving home health services under present program coverage rules. Our regulation (Section 199.1(n)) allows the recognition of special circumstance and authority of the Director to address them.

V. Payment Method for Home Health Care Services

TRICARE is adopting Medicare's benefit structure and prospective payment system for reimbursement of HHAs that are currently in effect for the Medicare program under Section 4603 of the Balanced Budget Act of 1997, as amended by Section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, and by Sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999. This includes adoption of the comprehensive Outcome and Assessment Information Set (OASIS) and consolidated billing requirements.

The adoption of the Medicare HHA prospective payment system replaces the retrospective physician-oriented fee-for-service model used for payment of home health services under TRICARE. Under the new prospective payment system, TRICARE will reimburse HHAs a fixed case-mix and wage-adjusted 60-day episode payment amount for professional home health services, along with routine and non-routine medical supplies provided under the beneficiary's plan of care. Durable medical equipment and osteoporosis drugs receive a separate payment amount in addition to the prospective payment system amount for home health care services.

The variation in reimbursement among beneficiaries receiving home health care under this newly adopted prospective payment system will be dependent on the severity of the beneficiary's condition and expected resource consumption over a 60-day episode-of-care, with special reimbursement provisions for major intervening events, significant changes in condition, and low or high resource utilization. The resource consumption of these beneficiaries will be assessed using OASIS selected data elements. The score values obtained from these selected data elements will be used to classify home health beneficiaries into one of 80 Home Health Resource Groups (HHRGs) based on their average expected resource costs relative to other home health care patients.

The HHRG classification determines the cost weight, i.e., the appropriate case-mix weight adjustment factor that indicates the relative resources used and costliness of treating different patients. The cost weight for a particular HHRG is then multiplied by a standard average

prospective payment amount for a 60-day episode of home health care. The case-mix adjusted standard prospective payment amount is then adjusted to reflect the geographic variation in wages to come up with the final HHA payment amount. As indicated above, the ordinary unit of payment is based on a 60-day episode of care. Payment covers the entire episode of care regardless of the number of days of care actually provided during the 60-day period. There are exceptions to this standard payment period under certain conditions that will result in reduced or additional amounts being paid. If the beneficiary is still in treatment at the end of the initial 60-day episode of care, a physician must re-certify the beneficiary's continuing need for home health services and the homebound status of the patient, and a new episode of care may begin. There is currently no limit on the number of medically necessary consecutive 60-day episodes that beneficiaries may receive under the HHA prospective payment system.

As noted above, the variation in reimbursement among beneficiaries receiving HHC under this newly adopted prospective payment system will be dependent on the severity of the beneficiary's condition and expected resource consumption over a 60-day episode-of-care, with special reimbursement provisions for major intervening events, significant changes in condition, and low or high resource utilization. A case mix system has been developed to measure the severity and projected resource utilization of beneficiaries receiving home health services using selected data elements off of the OASIS assessment instrument (i.e., the assessment document submitted by HHAs for reimbursement) and an additional element measuring receipt of at least ten visits for therapy services. These key data elements are organized and assigned a score value in order to measure the impact of clinical, functional and services utilization dimensions on total resource use. The resulting summed scores are used to assign a beneficiary to a particular severity level within each of the following dimensions:

- *Clinical Dimension*—The clinical dimension has four severity levels (0–3) and takes into account the beneficiary's primary diagnosis and prevalent medical conditions.
- *Functional Dimension*—The functional dimension assesses the beneficiary's ability to perform various activities of daily living (e.g., the beneficiary's ability to dress and bathe) and consists of five severity levels (0–4).
- *Services Utilization Dimension*—The services utilization dimension has four severity levels (0–3) and indicates whether the beneficiary was discharged from a skilled nursing facility or rehabilitation hospital within the past 14 days and whether the patient is expected to receive ten or more occupational, physical and/or speech therapy visits.

A case-mix grouper is used for assigning a severity level within each of the above dimensions and for classifying the beneficiary into one of 80 HHRGs. The HHRG indicates the extent and severity of the beneficiary's home health needs reflected in its relative case-mix weight (cost weight). The case-mix weight indicates the group's relative resource use and cost of treating different patients. The case-mix weights for Fiscal Year 2001 ranged from 0.5265 to 2.8113. The standardized prospective payment rate is multiplied by the beneficiary's assigned HHRG case-mix weight to come up with the 60-day episode payment.

On March 30, 2004, DoD published a notice (69 FR 16531) to announce the phased-in implementation of the HHA prospective payment system with the start health care delivery date under each of the TRICARE Next Generation of Contracts (T–Nex). The implementation date for the regional groupings of states under each of the T–Nex contracts is provided in that notice. This implementation began on June 1, 2004, and was fully phased-in on November 1, 2004.

VI. Balance Billing Limitations

Consistent with the Congressional action discussed above, we are revising Section 199.6 of the regulation to specify that institutional providers, including SNFs and HHAs, are required, in order to be TRICARE-authorized providers, to be participating providers on all claims. They must accept, except for any required beneficiary deductible and co-payment amounts, the TRICARE payment as payment in full. Medicare and TRICARE payment rates are designed to fully reimburse the institutions and are required by Medicare and TRICARE to be accepted as full reimbursement. TRICARE eligible hospitals, SNFs, and HHAs must enter into a participation agreement.

VII. Definitions of ''Custodial Care'' and ''Domiciliary Care''

As noted above, Congress adopted definitions of ''custodial care'' and ''domiciliary care'' that we are incorporating into the TRICARE regulation. Custodial and domiciliary care continue to be excluded by the statute and regulation. However, the new definition for custodial care narrows the exclusion, resulting in increasing coverage of medically necessary custodial care. This is also consistent with the Congressional effort largely to standardize TRICARE and Medicare sub-acute care coverage and payment policies. As a corollary to these definitions, we are also adopting a definition of the term ''activities of daily living.''

VIII. Payment Methods for Hospital Outpatient Services

Medicare implemented a new Outpatient Prospective Payment System (OPPS) on August 1, 2000, as a payment methodology for facility charges in hospital outpatient departments and emergency departments. This system replaced Medicare's prior payment methodology for such services, which was largely based on provider cost reports, but included some fee schedules. The Medicare OPPS is in process of being phased in, with a series of transitional payment adjustments that were based partly upon the prior Medicare cost reports and Medicare's prior cost-based methodology. Consistent with the TRICARE payment reform statutory authority and general policy, we plan to follow the Medicare approach. However, because of complexities of the Medicare transition process and the lack of TRICARE cost report data comparable to Medicare's, it is not practicable for the Department to adopt Medicare OPPS for hospital outpatient services at this time. A separate regulatory initiative will address hospital outpatient services not covered by this regulation. We anticipate eventual adoption of the Medicare OPPS for most TRICARE hospital outpatient services covered by the Medicare OPPS.

This rule clarifies payments for hospital based outpatient services that have established allowable TRICARE charges. These services would include laboratory services including clinical laboratory; rehabilitation therapy services; radiology services; diagnostic services; ambulance services; durable medical equipment (DME) and supplies; oxygen and related supplies; drugs administered other than oral method; all professional provider services that are provided in an emergency room, clinic, or hospital outpatient department, etc.; and routine venipuncture. For these services, payments are based on the TRICARE-allowable cost method in effect for professional providers or the CHAMPUS Maximum Allowable Charge (CMAC). Some services have a professional and a technical component

such as laboratory, radiology, and diagnostic services. If only the technical component is billed by the hospital, the technical component of the TRICARE allowable charge will be applied to the TRICARE payment. If the professional outpatient hospital services are billed by a professional provider group, not by the hospital, no payment shall be made to the hospital for these services. All other outpatient hospital services, except for ambulatory surgery services, shall be paid as billed such as facility charges. Ambulatory surgery services shall be paid in accordance with Section 199.14(d) of the regulation.

IX. Public Comments

We published the interim final rule on June 13, 2002, and provided a 60-day comment period. We received public comments from several commentors. These comments and the Department's responses are summarized below.

Comment. One commentor felt that it would be preferable to adopt Medicare standards for coverage and payment through references to applicable Medicare statutory and regulatory provisions rather than incorporating the actual regulatory language itself. The commentor felt that inclusion of language beyond these references could result in the loss of uniformity; i.e., that the Department may not be able to keep current with changes in Medicare standards.

Response. The Department believes that incorporation of actual regulatory language, in addition to applicable cross references to Medicare statutes and regulations, will only tend to strengthen the uniformity between the programs. The conditions for participation, along with a general overview of the prospective payment methodology, will ensure a basic understanding of the benefit coverage and payments among managed care support contractors, providers and eligible beneficiary groups. As with other adopted Medicare reimbursement systems (e.g., those Medicare reimbursement systems for hospice and acute inpatient hospitalization), uniformity is maintained through annual policy manual updates. These routine changes ensure compliance with existing Medicare regulations and internal Program Memoranda (i.e., Medicare internal procedural guidelines for the processing and payment of home health services). The updating process also ensures that the most current rates and wage indexes are being used in reimbursement of home health services. We also believe that the Medicare cross references (i.e., the statutory and regulatory provisions) cited in the interim final rule are sufficient to maintain uniformity in benefit structure and reimbursement between the programs (i.e., consistency in benefit coverage and reimbursement between the Medicare and TRICARE programs). The cross referenced regulatory provisions implement key sections of the Social Security Act relating to covered services, conditions of participation and the prospective payment of home health services.

Comment. One commentor felt that the Department had exceeded the statutory authority granted it under the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Pub. L. 107–107 for home health services through the adoption of conditions of coverage and participation prescribed under Sections 1861(o) and 1891 of the Social Security Act and 42 CFR Part 484. The commentor also expressed the view that restricting eligibility to home care based on a ''qualifying service,'' would limit an effective way to decrease aide visits, while at the same time provide compensatory strategies needed to increase beneficiary safety and independence.

Response. The Department does not believe it has exceeded the statutory authority granted to it under the NDAA–02, Pub. L. 107–107, given the fact that the conditions of coverage and participation prescribed under 1861(o) and 1891 of the Social Security Act and 42 CFR Part 484 are an integral part of the Medicare home health benefit from which HHA PPS rates were extrapolated; i.e., the national mean utilization for each of the six home health disciplines was used in calculating the initial unadjusted national 60-day episode payment. Since the conditions of coverage/participation determine the mix and level of services (e.g., the beneficiary must need skilled nursing care on an intermittent basis, or physical therapy or speech-language pathology services, or have continued need for occupational therapy after the need for skilled nursing care, physical therapy, or speech-language pathology services have ceased, on which the prospective payment rates were based), it is illogical to believe that it was Congress' intent to exclude their adoption under the TRICARE program. A shift in the mix and level of services (e.g., the substitution of occupational services for home health aide services) resulting from elimination of the Medicare conditions of coverage/participation would deviate from the resource allocation used in establishing the prospective payment rates.

Comments. Two commentors expressed concern over the weakness of Medicare's Outcome and Assessment Information Set (OASIS) instrument as a payment setting mechanism for maternity patients and individuals under the age of 18. The commentors felt that, while an abbreviated OASIS format (i.e., a core of 23 elements used to determine the reimbursement amount) might be workable, it would not accurately reflect the needs of a younger TRICARE population, or generate an appropriate payment for home health services.

Response. A fixed case-mix and wage adjusted 60-day episode payment will be paid to Medicare-certified home health agencies providing home health services to beneficiaries who are under the age of 18 and/or receiving maternity care. However, this prospective payment amount will be determined through the manual completion and scoring of an abbreviated assessment form (Home Health Resource Group Worksheet). The 23 items in this assessment will provide the minimal amount of data necessary for generating a Health Insurance Prospective Payment System (HIPPS) code for reimbursement under the HHA PPS. While an abbreviated assessment may facilitate payment under the HHA PPS, it does not adequately reflect the management oversight required to ensure quality of care for beneficiaries under the age of 18, and obstetrical patients. As a result, TRICARE contractors will have to continue to case manage these beneficiary categories through the use of appropriate evaluation criteria as required under the specific terms of their contract to ensure the quality and appropriateness of home health services (*e.g.*, the use of Interqual criteria for managing the appropriateness of home health services).

The program intends to conduct a follow-up analysis after at least a year's worth of accumulated data to evaluate the appropriateness of Medicare weights and rates in reimbursement of these specialty provider categories.

If a Medicare-certified HHA is not available within the service area, the TRICARE contractor may authorize care in a non-Medicare certified HHA (*e.g.*, a HHA which has not sought Medicare certification/approval due to the specialized beneficiary categories it services—patients receiving maternity care and/or patients under the age of 18) that qualifies for corporate services provider status under TRICARE. The freestanding corporate entity will be reimbursed for otherwise covered professional services under the TRICARE Maximum Allowable Charge (TMAC) reimbursement system, subject to any restrictions and limitations as

may be prescribed under existing TRICARE policy. Payment will also be allowed for supplies used by a TRICARE authorized individual provider employed by or under contract with a corporate services provider in the direct treatment of a TRICARE eligible beneficiary. Allowable supplies will be reimbursed in accordance with TRICARE allowable charge methodology. There are also regulatory and contractual provisions currently in place that grant contractors the authority to establish alternative network reimbursement systems as long as they do not exceed what would have otherwise been allowed under Standard TRICARE payment methologies.

Comment. One commentor wanted to know how children under the age of ten would be reimbursed given the fact that they are exempt from the HHA PPS.

Response. The exemption has been removed for children under the age of ten. A fixed case-mix and wage adjusted 60-day episode payment will be paid to Medicare-certified home health agencies providing home health services to beneficiaries who are under the age of 18. This prospective payment amount will be determined through the manual completion and scoring of an abbreviated assessment form (Home Health Resource Group Worksheet). The 23 items in this assessment will provide the minimal amount of data necessary for generating a Health Insurance Prospective Payment System (HIPPS) code for reimbursement under the HHA PPS.

Comment. Another commentor requested that the requirement for physician certification of the correctness of the Home Health Resource Group (HHRG) referenced in the **SUPPLEMENTARY INFORMATION** section of the interim final rule be removed and implementation monitored to ensure that the requirement is not enforced. The commentor felt that a physician was in no position to oversee the reimbursement methodology or to maintain the expertise necessary to offer such certification.

Response. The Department agrees that a physician does not have the necessary expertise to certify the correctness of the Home Health Resource Group (HHRG). As a result, the requirement has been removed from the **SUPPLEMENTARY INFORMATION** section of the final rule. Contractor enforcement of the deleted requirement is not anticipated since it does not appear in any of the implementing instructions (*i.e.*, TRICARE Policy Manual issuances). The physician's fundamental role is to certify the continuing need for home health services and the homebound status of the patient through the development and maintenance of a formal Plan of Care (POC). The POC must specify the medical treatments/services to be furnished, the type of home health disciplines that will furnish the ordered services, and the frequency of the services furnished.

Comment. One commentor felt that the absence of a definitive effective date would cause confusion for TRICARE beneficiaries and providers of home health services. It was recommended that a **Federal Register** notice be issued at least 60 days prior to the actual implementation date in order to give both patients and providers the opportunity to take appropriate steps to transition into the new benefit.

Response. On March 30, 2004, DoD published a notice (69 FR 16531) to announce the phased-in implementation of the HHA prospective payment system with the start health care delivery date under each of the TRICARE Next Generation of Contracts (T-Nex). The implementation date for the regional groupings of states under each of the T-Nex contracts was provided in that notice. This implementation began on June 1, 2004, and was fully phased-in on November 1, 2004. There were also provisions within the implementing guidelines which gave both patients and providers the necessary time to transition into the new benefit. Under those provisions, TRICARE contractors were responsible for identifying all beneficiaries receiving home health care services 60 days prior to implementation of the HHA PPS, and for notifying them and the HHA of any change in their benefit.

Comment. Another commentor suggested that ''Activities of Daily Living'' as defined in 32 CFR 199.2(b) be modified to include the phrase ''that reasonably can be performed by an untrained adult with minimum structure or supervision,'' since many of the listed activities can rise to the level of skilled nursing or therapy services in complicated or abnormal circumstances.

Response. Similar language already appears in the definition.

Comment. One commentor recommended that ''Home Health Discipline'' as defined in 32 CFR 199.2(b) be modified to include ''home health aide services'' since only 5 of the 6 disciplines appeared in the original rule.

Response. The definition of ''Home Health Discipline'' has been modified to include ''home health aide services''.

Comment. One commentor recommended that decisions on policy changes remain solely with TRICARE Management Activity and not with individual contractors. The commentor felt that variations in contractor policies could lead to lingering confusion between patients, providers and regulatory officials regarding actual policy interpretation.

Response. TRICARE Management Activity will be responsible for issuing all policy decisions and/or changes pertaining to the coverage and reimbursement of home health services.

Comment. Another commentor requested further clarification regarding the circumstances in which TRICARE would consider care ''custodial.''

Response. ''Custodial Care'' is treatment or services that can be rendered safely and reasonably by a person who is not medically skilled, and is designed mainly to help the patient with the activities of daily living. The activities of daily care consist of providing food (including special diets), clothing, and shelter; personal hygiene services, observation and general monitoring; bowel training or management (unless abnormalities in bowel function are of a severity to result in a need for medical or surgical intervention in the absence of skilled services); safety precautions; general preventive procedures (such as turning to prevent bedsores); passive exercise; companionship; recreation; transportation; and such other elements of personal care that reasonably can be performed by an untrained adult with minimal instruction or supervision.

Comment. Another commentor felt that the reference to ''all services'' in paragraph 199.6(b)(4)(xv)(F)(*1*) might be confusing, as it is intended to apply to all home health services. The commentor recommended that ''home health'' be added prior to ''services.''

Response. The commentor's recommendation has been adopted. ''All services'' in paragraph 199.6(b)(4)(xv)(F)(*1*) has been further clarified in this final rule by adding ''home health'' prior to ''services.''

Comment. A commentor recommended that ''Custodial Care'' as defined in 32 CFR 199.2(b) be modified to indicate that its application in the context of the home health benefit be limited to circumstances where the overall plan of care does not include any skilled nursing or therapy services. It was felt that additional guidance was necessary to avoid misapplication of the custodial care exclusion given the fact that home health aide services by their very nature are: (1) Services that can be rendered safely and reasonably by a person who is not medically skilled, or (2) designed to help a patient with the activities of daily living.

Response. The definition contained in the interim final rule is statutory, that is, the language was contained in the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Public Law 107–107, Section 701(c). Custodial care remains excluded.

Comment. A beneficiary advocacy organization expressed concern that (1) not all NDAA–02 reforms are addressed in the interim final rule; (2) family members may experience breaks in coverage for services allowed pre-NDAA–02 until all NDAA–02 reforms are implemented; and (3) a desire that active-duty family members are provided all services authorized by NDAA–02.

Response. (1) Because of the complexity of developing the proposed programs, including significant agency decisions regarding the discretionary elements of NDAA–02, and the requirement to follow the prescribed rule-making process, the Agency has determined it is more timely and fiscally prudent to implement certain NDAA–02 authorized programs separate from those covered by this rule; (2) there are no pre- NDAA–02 benefits which require implementation of NDAA–02 benefits in order to be allowed; and (3) those services required by NDAA–02 to be provided to active-duty family members are available through existing programs; discretionary NDAA–02 elements will be implemented following the rule-making process and incorporation into the managed care support contracts.

Comment. The same organization wanted to know how the new home health benefit and reimbursement methodology was going to be transitioned into the program since the existing coverage is more robust than that being implemented through statute.

Response. The new home health benefit and reimbursement system has been transitioned into the program as part of the next generation of TRICARE contracts. There were provisions within the implementing guidelines which gave both patients and providers the necessary time to transition into the new benefit. Under these provisions, TRICARE contractors were responsible for identifying all beneficiaries receiving home health care services 60 days prior to implementation of the HHA PPS, and for notifying them and the HHA of any change in their benefit.

Comment. The same organization also wanted to know how the cases of beneficiaries who are already getting a benefit and who did not have a three-day qualifying hospital stay (required for a skilled nursing facility (SNF) benefit) be handled. The commentor raised concerns about the education for providers treating non-Medicare eligible beneficiaries and wanted to know how providers will know that the three-day Medicare rule will also apply to these TRICARE beneficiaries.

Response. The three-day qualifying hospital stay and the SNF prospective payment system (PPS) requirements apply to those cases that have an SNF admission date of August 1, 2003, or after. This implementation date allowed for the education of providers. Under the new requirements, SNFs are required to enter into a participation agreement with TRICARE. Along with this participation agreement, the Managed Care Support (MCS) contractors are required to send a letter to SNFs explaining the new requirements. This letter specifically states that the new requirements also apply to those TRICARE beneficiaries who are not Medicare-eligible. Prior to the implementation of SNF PPS, MCS contractors spent considerable effort in educating the providers regarding the new SNF benefit and PPS requirements and entered into a participation agreement with SNFs.

Comment. The same organization suggested that guidelines regarding benefits available to active-duty family members versus non-active-duty family members be incorporated into this rule.

Response. As mentioned above, the benefits authorized by NDAA–02 for active-duty family members are either currently available or will be so as a result of separate rule-making and implementation in the T-Nex contracts, therefore, suggested guidelines are not necessary in this rule.

Comment. That organization commented that the Resource Utilization Groups (RUG–III) used to calculate SNF payments and the Minimum Data Set (MDS) assessments may not be designed to reflect coverage of conditions affecting children and supported the Department's proposal not to use the MDS for children under age ten. They believed it appropriate that the ''billed charge'' for the care of these children will be deemed the ''allowed charge.'' The organization also commented that it is concerned about the transition for care of children as they get older and that there may be a period where coverage for slightly more home care will allow the family to have the child with them at home before having to place the child in an institutional setting. It suggested that the procedures allow for some flexibility to meet the needs and wishes of the family where cost effective.

Response. For the benefits authorized by section 701(b) of NDAA–02, the allowed charges will be the ''billed charges'' or ''negotiated rates'' for children under age 10. As stated in the rule, the MDS will not be used for assessment of these children until further review by the Department is completed. Currently, the applicability of MDS will be determined based on the child's age (10 years) on the date of his/her SNF admission. We believe the medical necessity and medical appropriateness should determine the most cost effective level and setting of care. In certain cases, home health care may be the most cost effective and appropriate care based upon the medical necessity and medical need of a child's condition.

Comment. The same commentor was also concerned that the definition of ''homebound'' may be too restrictive for families with children. The commentor believed this definition needed to be modified to reflect the characteristics of the entire TRICARE beneficiary population, and not just the Medicare-eligible segment.

Response. An exception is being made to the definitional homebound criteria for beneficiaries under the age of 18 and those receiving maternity care. The only homebound requirement for these special beneficiary categories is written certification from a physician attesting to the fact that leaving the home would place the beneficiary at medical risk.

Comment. Two commentors recommended elimination of the significant change in condition (SCIC) adjustment in 32 CFR 199.14(h)(4), as it creates an unnecessary administrative burden and unfairly reimburses providers when patients' conditions deteriorate.

Response. Section 707 of National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) was quite specific in its intent that TRICARE home health payment amounts be determined to the extent practicable in accordance with the same reimbursement rates as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1295). Elimination of the significant change in condition (SCIC) adjustment would represent a major deviation from the Medicare HHA PPS methodology, and as such, would be contrary to the statutorily mandated reimbursement provisions under Section 707 of NDAA–02.

Comment. Another commentor wanted to know if TRICARE would be adopting changes to the OASIS data collection instrument as a result of upcoming Center for Medicare and

Medicaid Services (CMS) Technical Expert Panel (TEP) assessments.

Response. TRICARE will be adopting all upcoming Center for Medicare and Medicaid Services (CMS) changes to the OASIS data collection instrument.

Comment. Two commentors felt that the requirement for TMA Director approval of home health aide training programs, as specified in 32 CFR 199.4(e)(21)(i)(D), would impose an additional standard beyond that set out in the Medicare conditions of participation for home health agencies. It was recommended that the requirement for home health aide training programs be modified to reflect the current Conditions of Participation under the Medicare Program.

Response. The requirement for home health aide training programs has been modified to reflect the current condition of participation under the Medicare program; i.e., the home health aide must have successfully completed a state-established or other training program that meets the requirements of 42 CFR 484.36 Condition of participation: Home health aide services.

Comment. One commentor wanted to know if the concept of ''TRICARE-authorized physician'' was more restrictive than that of Medicare's—as it relates to general supervision/direction of ''skilled nursing services'' as defined in 32 CFR 199.2(b). The commentor recommended that ''TRICARE-authorized physician'' either be defined, or the reference eliminated from the definition of ''skilled nursing services.''

Response. Physician as defined in 32 CFR 199.2(b) is a person with a degree of Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) who is licensed to practice medicine by an appropriate authority. Based on this definition, it appears that the concept of ''TRICARE-authorized physician'' is comparable to that of Medicare's—as it relates to general supervision/direction of ''skilled nursing services.''

Comment. One commentor recommended adding the phrase ''subject to appropriate adjustments'' at the end of the second and fourth sentences of subparagraph 32 CFR 199.14(h)(1), since residual final payment depends upon the actual HHRG and the impact of other payment adjustments that cannot be made prior to final claim submission.

Response. The phrase ''subject to appropriate adjustments'' is being added to the recommended sentences in subparagraph 32 CFR 199.14(h)(1), since it is agreed that residual final payments are impacted by other payment adjustments that cannot be made prior to final claim submission.

Comment. Several commentors felt that the OASIS was an unsuitable data collection tool for active duty dependents since it was developed primarily for the elderly with very different health care needs. The commentor recommended development of an assessment tool which would more closely correlate with a younger, healthier TRICARE population.

Response. The program intends to conduct a follow-up analysis after at least a year's worth of accumulated data to evaluate the appropriateness of Medicare weights and rates in reimbursement of TRICARE beneficiaries.

Comment. Another commentor recommended adding the phrase ''to another home health agency'' following ''transfer'' in subparagraph 32 CFR 199.14(h)(3), since transfer is limited to a transfer to another home health agency for continuation of receiving the home health benefit.

Response. The commentor's recommendation has been adopted by adding the phrase ''to another home health agency'' following ''transfer'' in subparagraph 32 CFR 199.14(h)(3) of the final rule.

Comment. One commentor recommended modification of the citation references in 32 CFR 199.4(e)(21)(ii)(I). The commentor felt that the existing citations were related solely to Medicare conditions of participation for home health agencies rather than conditions of coverage for home health services.

Response. The citation reference 42 CFR 409, Subpart E, has been added to subparagraph 32 CFR 199.4(e)(21)(ii)(I). This subpart implements Sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Social Security Act with respect to the requirements that must be met for Medicare payment to be made for home health services furnished to eligible beneficiaries.

Comment. Another commentor felt that a description of the outlier payment methodology was warranted in the regulatory text.

Response. A description of the outlier payment methodology has been incorporated into the final rule.

Comment. Another commentor felt that the Medicare qualifying condition for payment definition of ''intermittent skilled nursing services'' be included in 32 CFR 199.2(b), since it is distinct from the scope of coverage standards available under the home health benefit (i.e., the definitions of ''intermittent home health aide and skilled nursing services'' and ''part time home health aide and skilled nursing services'').

Response. The definitions of intermittent or part-time skilled nursing and home health aide services have been consolidated and revised to reflect the statutory definition under § 1861 of the Social Security Act (42 U.S.C. 1395x(m)).

Comment. One commentor felt that the new definitions of custodial care, domiciliary care and activities of daily living combined with the anticipated ''significant increase'' in patient volume and the elimination of Medicare day limits require careful administration and oversight that can best be provided through case management and suggested to include operational guidelines for the Managed Care Support Contractors.

Response. The Department will administer the provisions consistent with the statutory requirements. Detailed operational guidelines have been developed for the Managed Care Support contractors.

Comment. The same commenter stated that the Medicare payment system was not designed for an active duty population and misses the mark completely with respect to children.

Response. These issues have been addressed above and the Department plans to carefully monitor and evaluate the issues pertaining to children.

Comment. The commenter stated that there is some concern as to how well the rule will serve the needs of those living outside the continental United States.

Response. The SNF PPS will be applicable to those areas outside the continental United States as it is applicable under Medicare.

Comment. The commentor felt that there was a gap in the level of nursing care afforded under the new home health benefit.

Response. 32 CFR 199.4(e)(21) ''Home health services,'' provides the broad range of services available under the new home health benefit structure.

Comment. The commentor pointed out that home health aide and medical social worker services were currently being covered under case management as well as under the hospice benefit.

Response. Section IV of the **SUPPLEMENTARY INFORMATION** portion of the rule has been modified to reflect this additional coverage.

Comment. The same commentor suggested that the rule specify what, if any, benefit exclusions remain following the change in the definitions of ''custodial care'' and ''domiciliary care.''

Response. The existing regulatory language provides the benefit exclusions; relevant TRICARE policies have been or will be modified as

necessary to reflect the revised definitions.

Comment. The commentor also suggested adding a regulatory definition for ''medically necessary care.''

Response. That term is consistent with the existing regulatory definitions of ''appropriate medical care'' and ''medically or psychologically necessary''; a separate definition is not necessary.

Comment. The same commentor recommended that the case manager's involvement in the plan of care be recognized in the final rule.

Response. The regulatory provisions for establishment of a plan of care are consistent with those provided under the Medicare program.

X. Regulatory Procedures

We have examined the impacts of the Final Rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

We originally thought that this final rule was a major one because it had an impact of more than $100 million per year. However, we now believe that the impact will be significantly less. We had originally projected that the skilled nursing facility (SNF) benefit change and the reduced TRICARE payments to SNFs would reduce SNF payments by more than $100 million per year. However, analysis of actual SNF payments that have been made since the benefit changes and payment system were implemented in August 2003 indicate that the impact has been much less than expected. Based on the analysis of actual SNF payments and other benefit changes, we have determined that this rule is not economically significant under Executive Order 12866.

SNF Changes

The objective of the SNF benefit change and the revised SNF payment system is to make TRICARE's SNF benefit consistent with Medicare, which satisfies a Congressional goal. A second objective is to increase the quality of care by requiring a more detailed review of SNF cases and more appropriate placement of SNF patients. There will also be an increase in payment efficiency because SNF payments will cease when SNF care is no longer necessary.

We assessed the quantitative impact of the SNF change by comparing TRICARE's payments for SNF care prior to the changes with payments after the changes were implemented in August 2003. These payment trends capture both the impact of the SNF benefit changes and reimbursement changes.

We examined SNF payments for beneficiaries under age 65 and age 65 and over separately. Table 1 shows that the level of government payments for SNF services for beneficiaries under age 65 declined by about 48 percent from the quarter immediately prior to implementation of the new rules to the quarter immediately after their implementation (we did not use data from August 2003 because some persons were in SNFs under the old rules and some were there under the new rules). We believe that most of this impact is due to TRICARE's shift from paying billed charges for SNF services to using the SNF PPS method. The percentage reduction in government SNF payments was less for persons age 65 and over: we found an 11 percent decline in SNF payments for these beneficiaries. We believe that the impact is less for beneficiaries age 65 and over because TRICARE is second payer to Medicare. Because Medicare's payments for these beneficiaries have been based on Medicare's SNF–PPS payment system for a number of years, TRICARE's introduction of the new payment system had a very small impact. In aggregate, the benefit changes and the new SNF payment system reduced TRICARE government payments to SNFs by 18 percent, which is equal to about $4.2 million per quarter or about $17 million per year.

TABLE 1.—CHANGE IN GOVERNMENT PAYMENTS FOR SNF CARE FOR TRICARE BENEFICIARIES

[In thousands]

	Under age 65	Age 65 and above	Total
May–July 2003	$4,790	$18,051	$22,841
Sep–Nov 2003	$2,571	$16,048	$18,619
% Change	−48	−11	−18

Home Health

The objective of the home health (HH) benefit change and the revised HH payment system is to make TRICARE's HH benefit consistent with Medicare, which satisfies a Congressional goal. A second objective is to increase the quality of care by requiring a more detailed review of HH cases and more appropriate placement of HH patients. The HH payment system also increases efficiency because its per-episode method of payment discourages unnecessary utilization.

For home health claims, the benefit and reimbursement changes have just gone into effect and the data have not developed as of yet. Therefore, the retrospective method of analysis we used for SNF services is not possible for home health claims. We analyzed recent HH payments under TRICARE and found that TRICARE paid about $21 million per year in home health allowed amounts in the 2002–2003 period. We estimate that the new HH system will decrease HH payments by approximately 20 percent. Thus, we estimate that TRICARE payments for HH care will be reduced by approximately $4 million per year. We estimate an impact of less than $1 million per year for beneficiaries age 65 and over because TRICARE is secondary payer to Medicare and Medicare has been using the HH PPS method to pay HH services for a number of years.

Change in Definition of Custodial Care

The narrowing of the definition of custodial care expanded the benefits available to certain TRICARE beneficiaries. This satisfied the Congressional goal of revising TRICARE's definition of custodial care and expanding TRICARE's benefits.

We assessed the quantitative impact of the change by examining the level of additional benefits that TRICARE paid for persons who received benefits under the expanded program. We were able to identify the TRICARE beneficiaries who received services due to the expanded TRICARE benefits. We found that

TRICARE payments were approximately $6.9 million in FY 2003 for these beneficiaries. All of these benefit payments represented additional government payments due to the change in the definition of custodial care. The payments were $6.2 million in the first six months of FY 2004. Reliable data are not available beyond the first six months of FY04. We believe that the FY04 impact is more appropriate and believe that the annual impact of the change in the definition of custodial care is about $12.4 million.

Summary

The quantitative impact of the three changes consists of $17 million in savings for the SNF change, $4 million in savings for the HH change, and $12 million in costs for the change in the definition of custodial care.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized. Comments on information collection requirements should be submitted to Kim Frazier, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, telephone 703–681–3636.

Implementation

This rule implements specific statutory requirements with specific statutory effective dates. The implementation of new SNF benefit requirements and SNF prospective payment system is effective for admissions on or after August 1, 2003. The implementation of the other benefit requirements and the home health care prospective payment system is effective with the start health care delivery date under each of the TRICARE Next Generation of Contracts (T-Nex). The implementation of T-Nex contracts was fully phased-in on November 1, 2004. These other benefit requirements and the home health care prospective payment system are part of the contractual requirements of the T-Nex contracts, and were not negotiated or directed as a change to the previous contracts.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.2(b) is amended by adding the definitions of ''facility charge'' and ''part-time or intermittent home health aide and skilled nursing services'' in alphabetical order, by revising the definitions of ''homebound'' and ''home health discipline'', by removing the definitions of ''intermittent home health aide and skilled nursing services'' and ''part-time home health aide and skilled nursing services'', to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Facility charge. The term ''facility charge'' means the charge, either inpatient or outpatient, made by a hospital or other institutional provider to cover the overhead costs of providing the service. These costs would include building costs, *i.e.* depreciation and interest; staffing costs; drugs and supplies; and overhead costs, *i.e.*, utilities, housekeeping, maintenance, etc.

* * * * *

Homebound. A beneficiary's condition is such that there exists a normal inability to leave home and, consequently, leaving home would require considerable and taxing effort. Any absence of an individual from the home attributable to the need to receive health care treatment—including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a state, or accredited to furnish adult day-care services in the—state shall not disqualify an individual from being considered to be confined to his home. Any other absence of an individual from the home shall not disqualify an individual if the absence is infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. Also, absences from the home for non-medical purposes, such as an occasional trip to the barber, a walk around the block or a drive, would not necessarily negate the beneficiary's homebound status if the absences are undertaken on an infrequent basis and are of relatively short duration. An exception is made to the above homebound definitional criteria for beneficiaries under the age of 18 and those receiving maternity care. The only homebound criteria for these special beneficiary categories is written certification from a physician attesting to the fact that leaving the home would place the beneficiary at medical risk.

Home health discipline. One of six home health disciplines covered under the home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

* * * * *

Part-time or intermittent home health aide and skilled nursing services. Part-time or intermittent means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-bay-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week).

* * * * *

■ 3. Section 199.4 is amended by revising the second sentence in paragraph (b)(3)(xiv), by removing and reserving paragraph (e)(12), by revising paragraphs (e)(21)(i)(D), (e)(21)(ii)(I), by revising ''§ 199.14(i)'' to read ''§ 199.14(e)'' in paragraphs (f)(8)(i) and (f)(8)(ii)(A), and by revising paragraphs (g)(7) and (g)(8) to read as follows:

§ 199.4 Basic program benefits.

(b) * * *

(3) * * *

(xiv) * * * Skilled nursing facility care for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

* * *

* * * * *

(e) * * *

(21) * * *

(i) * * *

(D) Part-time or intermittent services of a home health aide who has successfully completed a state-established or other training program that meets the requirements of 42 CFR Part 484;

* * * * *

(ii) * * *

(I) Any other conditions of coverage/participation that may be required under Medicare's HHA benefit; *i.e.*, coverage guidelines as prescribed under Sections 1861(o) and 1891 of the Social Security Act (42 U.S.C. 1395x(o) and 1395bbb), 42 CFR Part 409, Subpart E and 42 CFR Part 484.

* * * * *

(g) * * *

(7) *Custodial care.* Custodial care as defined in § 199.2.

(8) *Domiciliary care.* Domiciliary care as defined in § 199.2.

* * * * *

■ 4. Section 199.6 is amended by revising paragraph (a)(8)(i)(B), by adding a note in paragraph (b)(4)(vi)(K), and by revising paragraph (b)(4)(xv)(F)(*1*), to read as follows:

§ 199.6 TRICARE authorized providers.

(a) * * *

(8) * * *

(i) * * *

(B) A SNF or a HHA, in order to be an authorized provider under TRICARE, must enter into a participation agreement with TRICARE for all claims.

* * * * *

(b) * * *

(4) * * *

(vi) * * *

(K) * * *

Note: If a pediatric SNF is certified by Medicaid, it will be considered to meet the Medicare certification requirement in order to be an authorized provider under TRICARE.

* * * * *

(xv) * * *

(F) * * *

(*1*) The HHA must submit all TRICARE claims for all home health services, excluding durable medical equipment (DME), while the beneficiary is under the home health plan without regard to whether or not the item or service was furnished by the HHA, by others under arrangement with the HHA, or under any other contracting or consulting arrangement.

* * * * *

■ 5. Section 199.14 is amended as follows:

■ a. Amend paragraph (a)(4) by revising ''paragraph (i)'' to read ''paragraph (l)'';

■ b. Revise paragraphs (a)(5) introductory text and (a)(5)(i);

■ c. Amend paragraphs (a)(5)(ii) and (a)(5)(iii) by revising ''paragraph (h)(1)'' to read ''paragraph (j)(1)'' in both places;

■ d. Revise paragraph (a)(5)(iv);

■ e. Add paragraphs (a)(5)(v) through (a)(5)(xii);

■ f. Revise paragraphs (h) introductory text; (h)(1), (h)(3), and (h)(5);

■ g. Amend paragraph (j)(1)(i)(B) by revising ''paragraph (g)(1)(iv)'' to read ''paragraph (j)(1)(iv)'';

■ h. Amend paragraph (j)(1)(i)(D) by revising ''paragraph (h)(1)(i)(B)'' to read ''paragraph (j)(1)(i)(B)'' and by revising ''paragraph (h)(1)(i)(C)'' to read ''paragraph (j)(1)(i)(C)'';

■ i. Amend paragraph (j)(1)(ii)(B) by revising ''paragraph (g)(1)(ii)(A)'' to read ''paragraph (j)(1)(ii)(A)''

■ j. Amend paragraph (j)(1)(ii)(C) by revising ''paragraph (g)(1)(ii)(B)'' to read ''paragraph (j)(1)(ii)(B)'';

■ k. Amend paragraph (j)(1)(iii) introductory text by revising ''paragraphs (g)(1)(iii)(A) and (B)'' to read ''paragraphs (j)(1)(iii)(A) and (B)'';

■ l. Amend paragraph (j)(1)(iii)(D) by revising ''paragraphs (h)(1)(i) through (iii)'' to read ''paragraphs (j)(1)(i) through (iii)'' and by revising ''paragraph (h)(1)(iii)(B)'' to read ''(j)(1)(iii)(B)'';

■ m. Amend paragraph (j)(1)(iv)(B)(*2*) by revising ''paragraph (g)(1)(iv)(B)(*1*)'' to read ''paragraph (j)(1)(iv)(B)(*1*)'';

■ n. Amend paragraph (j)(1)(iv)(C) by revising ''paragraph (g)(1)(iii)(A)(*1*)'' to read ''paragraph (j)(1)(iii)(A)(*1*)'', by revising ''paragraphs (g)(1)(iii) and (g)(1)(iv)'' to read ''paragraphs (j)(1)(iii) and (j)(1)(iv)'', and by revising ''paragraph (g)(1)(iii)(C)'' to read ''paragraph (j)(1)(iii)(C)'';

■ o. Amend paragraph (j)(1)(iv)(C)(*1*) by revising ''paragraph (g)(1)(iv)(C)(*2*)'' to read ''paragraph (j)(1)(iv)(C)(*2*)'';

■ p. Amend paragraph (j)(1)(ii)(C)(*2*) by revising ''paragraph (g)(1)(iv)(C)(*1*)'' to read ''paragraph (j)(1)(iv)(C)(*1*)'', and by revising ''paragraph (g)(1)(iv)(C)(*3*)'' to read ''paragraph (j)(1)(iv)(C)(*3*)'';

■ q. Amend paragraph (j)(1)(iv)(D) introductory text by revising ''paragraph (h)(1)(iv)(C)'' to read ''paragraph (j)(1)(iv)(C)'', and by revising ''paragraph (h)(1)'' to read ''paragraph (j)(1)'';

■ r. Amend paragraph (j)(1)(iv)(D)(*2*)(*i*) by revising ''paragraph (h)(1)'' to read ''paragraph (j)(1)'';

■ s. Amend paragraph (j)(1)(iv)(D)(*2*)(*ii*) by revising ''paragraph (h)(1)(ii)'' to read ''paragraph (j)(1)(ii)'' and by revising ''paragraph (h)(1)(iv)(A)'' to read ''paragraph (j)(1)(iv)(A)'';

■ t. Amend paragraph (j)(1)(iv)(D)(*3*) by revising ''paragraph (h)(1)(iv)(D)'' to read ''paragraph (j)(1)(iv)(D)'';

■ u. Amend paragraph (j)(1)(iv)(E) introductory text by revising ''paragraph (h)(1)'' to read ''paragraph (j)(1)'', and by revising ''paragraph (h)(1)(iv)(E)'' to read ''paragraph (j)(1)(iv)(E)'';

■ v. Amend paragraph (j)(1)(iv)(E)(*2*) by revising ''paragraph (h)(1)'' to read ''paragraph (j)(1)'';

■ w. Amend paragraph (j)(1)(v)(A) by revising ''paragraph (g)(1)(v)'' to read ''paragraph (j)(1)(v)'';

■ x. Amend paragraph (j)(1)(v)(B) by revising ''(g)(1)(v)(B)(*1*) through (*3*)'' to read ''paragraphs (j)(1)(v)(B)(*1*) through (*3*)'';

■ y. Amend paragraph (j)(1)(v)(C) introductory text by revising ''paragraph (g)(i)(v)'' to read ''paragraph (j)(1)(v)'';

■ z. Amend paragraph (j)(1)(vi)(A) by revising ''paragraph (g)(1)(ii)(B)'' to read ''paragraph (j)(1)(ii)(B)'' and by revising ''paragraph (g)(1)(v)'' to read ''paragraph (j)(1)(v)'';

■ aa. Amend paragraph (j)(1)(vi)(B) introductory text by revising ''paragraph (g)(1)(vi)(A)'' to read ''paragraph (j)(1)(vi)(A)'';

■ bb. Amend paragraph (j)(1)(vi)(B)(*1*) by revising ''paragraph (g)(1)(vi)(B)(*2*)'' to read ''paragraph (j)(1)(vi)(B)(*2*)'', and by revising ''paragraph (g)(1)(v)'' to read ''paragraph (j)(1)(v)'';

■ cc. Amend paragraph (j)(1)(vi)(B)(*2*) by revising ''paragraph (g)(1)(v)'' to read ''paragraph (j)(1)(v)'' and by revising ''paragraph (g)(1)(v)(B)(*2*)'' to read ''(j)(1)(v)(B)(*2*)'';

■ dd. Amend paragraph (j)(1)(vii)(A) by revising ''paragraphs (g)(1)(iii) and (g)(1)(v)'' to read ''paragraphs (j)(1)(iii) and (j)(1)(v)'';

■ ee. Amend paragraph (j)(1)(viii) introductory text by revising ''paragraphs (g)(1)(i) through (g)(1)(iv)'' to read ''paragraphs (j)(1)(i) through (j)(1)(iv)'';

■ ff. Amend paragraph (j)(1)(viii)(A) by revising ''paragraph (g)(1)(viii)'' to read ''paragraph (j)(1)(viii)'';

■ gg. Amend paragraph (j)(1)(viii)(B) by revising ''paragraph (g)(1)(iii)'' to read ''paragraph (j)(1)(iii)'';

■ hh. Amend paragraph (j)(1)(viii)(C) by revising ''paragraph (g)(1)(iv)'' to read ''paragraph (j)(1)(iv)'';

■ ii. Amend paragraph (j)(1)(viii)(D) by revising ''paragraph (g)(1)(iv)(B)'' to read ''paragraph (j)(1)(iv)(B)'';

■ jj. Amend paragraph (l)(2) introductory text by revising ''paragraph (g)'' to read ''paragraph (j)''; and

■ kk. Amend paragraph (l)(2) by revising ''paragraph (g)'' to read ''paragraph (j)''.

§ 199.14 Provider reimbursement methods.

(a) * * *

(5) *Hospital outpatient services.* This paragraph (a)(5) identifies and clarifies payment methods for certain outpatient services, including emergency services, provided by hospitals.

(i) *Laboratory services.* TRICARE payments for hospital outpatient laboratory services including clinical laboratory services are based on the allowable charge method under paragraph (j)(1) of the section. In the case of laboratory services for which the CMAC rates are established under that paragraph, a payment rate for the technical component of the laboratory services is provided. Hospital charges for an outpatient laboratory service are reimbursed using the CMAC technical component rate.

* * * * *

(iv) *Radiology services.* TRICARE payments for hospital outpatient

radiology services are based on the allowable charge method under paragraph (j)(1) of the section. In the case of radiology services for which the CMAC rates are established under that paragraph, a payment rate for the technical component of the radiology services is provided. Hospital charges for an outpatient radiology service are reimbursed using the CMAC technical component rate.

(v) *Diagnostic services.* TRICARE payments for hospital outpatient diagnostic services are based on the allowable charge method under paragraph (j)(1) of the section. In the case of diagnostic services for which the CMAC rates are established under that paragraph, a payment rate for the technical component of the diagnostic services is provided. Hospital charges for an outpatient diagnostic service are reimbursed using the CMAC technical component rate.

(vi) *Ambulance services.* Ambulance services provided on an outpatient basis by hospitals are paid on the same basis as ambulance services covered by the allowable charge method under paragraph (j)(1) of this section.

(vii) *Durable medical equipment (DME) and supplies.* Durable medical equipment and supplies provided on an outpatient basis by hospitals are paid on the same basis as durable medical equipment and supplies covered by the allowable charge method under paragraph (j)(1) of this section.

(viii) *Oxygen and related supplies.* Oxygen and related supplies provided on an outpatient basis by hospitals are paid on the same basis as oxygen and related supplies covered by the allowable charge method under paragraph (j)(1) of this section.

(ix) *Drugs administered other than oral method.* Drugs administered other than oral method provided on an outpatient basis by hospitals are paid on the same basis as drugs administered other than oral method covered by the allowable charge method under paragraph (j)(1) of this section. The allowable charge for drugs administered other than oral method is established from a schedule of allowable charges based on a formulary of the average wholesale price.

(x) *Professional provider services.* TRICARE payments for hospital outpatient professional provider services rendered in an emergency room, clinic, or hospital outpatient department, etc., are based on the allowable charge method under paragraph (j)(1) of the section. In the case of professional services for which the CMAC rates are established under that paragraph, a payment rate for the professional component of the services is provided. Hospital charges for an outpatient professional service are reimbursed using the CMAC professional component rate. If the professional outpatient hospital services are billed by a professional provider group, not by the hospital, no payment shall be made to the hospital for these services.

(xi) *Facility charges.* TRICARE payments for hospital outpatient facility charges that would include the overhead costs of providing the outpatient service would be paid as billed. For the definition of facility charge, see § 199.2(b).

(xii) *Ambulatory surgery services.* Hospital outpatient ambulatory surgery services shall be paid in accordance with § 199.14(d).

* * * * *

(h) *Reimbursement of Home Health Agencies (HHAs).* HHAs will be reimbursed using the same methods and rates as used under the Medicare HHA prospective payment system under Section 1895 of the Social Security Act (42 U.S.C. 1395fff) and 42 CFR Part 484, Subpart E except as otherwise necessary to recognize distinct characteristics of TRICARE beneficiaries and as described in instructions issued by the Director, TMA. Under this methodology, an HHA will receive a fixed case-mix and wage-adjusted national 60-day episode payment amount as payment in full for all costs associated with furnishing home health services to TRICARE-eligible beneficiaries with the exception of osteoporosis drugs and DME. The full case-mix and wage-adjusted 60-day episode amount will be payment in full subject to the following adjustments and additional payments:

(1) *Split percentage payments.* The initial percentage payment for initial episodes is paid to an HHA at 60 percent of the case-mix and wage adjusted 60-day episode rate. The residual final payment for initial episodes is paid at 40 percent of the case-mix and wage adjusted 60-day episode rate subject to appropriate adjustments. The initial percentage payment for subsequent episodes is paid at 50 percent of the case-mix and wage-adjusted 60-day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage-adjusted 60-day episode rate subject to appropriate adjustments.

* * * * *

(3) *Partial episode payment (PEP).* A PEP adjustment is used for payment of an episode of less than 60 days resulting from a beneficiary's elected transfer to another HHA prior to the end of the 60-day episode or discharge and readmission of a beneficiary to the same HHA before the end of the 60-day episode. The PEP payment is calculated by multiplying the proportion of the 60-day episode during which the beneficiary remained under the care of the original HHA by the beneficiary's assigned 60-day episode payment.

* * * * *

(5) *Outlier payment.* Outlier payments are allowed in addition to regular 60-day episode payments for beneficiaries generating excessively high treatment costs. The following methodology is used for calculation of the outlier payment:

(i) TRICARE makes an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

(ii) The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment amount for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.

(iii) The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

(iv) TRICARE imputes the cost for each episode by multiplying the national per-visit amount of each discipline by the number of visits in the discipline and computing the total imputed cost for all disciplines.

(v) The fixed dollar loss amount and the loss sharing proportion are chosen so that the estimated total outlier payment is no more than the predetermined percentage of total payment under the home health PPS as set by the Centers for Medicare & Medicaid Services (CMS).

* * * * *

Dated: October 5, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20415 Filed 10–21–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09–05–080]

RIN 1625–AA09

Drawbridge Operation Regulations; Sturgeon Bay Ship Canal; Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the operating regulations for the Michigan Street and Bayview drawbridges, both in Sturgeon Bay, WI, by establishing a permanent winter operating schedule while still providing for the reasonable needs of navigation.

DATES: This rule is effective November 23, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–05–080] and are available for inspection or copying at Commander (dpw–3), Ninth Coast Guard District, 1240 E. Ninth Street, Room 2025, Cleveland, Ohio 44199–2060, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scot M. Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902–6087.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 17, 2005, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulations; Sturgeon Bay Ship Canal, Sturgeon Bay, WI,'' in the **Federal Register** (70 FR 48354). We received one letter commenting on the proposed rule. The letter was from the Lake Carriers Association, representing certain American shipping companies on the Great Lakes, which confirmed its position of no objection to the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of the Wisconsin Department of Transportation (WI–DOT), is modifying the existing operating schedule of the Michigan Street and Bayview Bridges, miles 4.3 and 3.0, respectively, over the Sturgeon Bay Ship Canal. The modified regulation primarily establishes permanent winter operating schedules for each drawbridge in lieu of the annual winter authorization granted by Commander, Ninth Coast Guard District, under the authority of 33 CFR 117.45.

The Michigan Street Bridge at mile 4.3 over Sturgeon Bay Ship Canal is a single-leaf bascule bridge that provides a vertical clearance of 14 feet in the lowered position. The current operating regulation for Michigan Street Bridge requires the drawbridge to open for recreational vessels only on the hour, 24 hours a day, between March 15 and December 31 each year, and as soon as possible if more than 20 vessels have accumulated at the bridge. Commercial and public vessels are passed at all times. From January 1 through March 14 each year, the bridge opens for vessels if 12-hours advance notice is provided.

This final rule makes that operating schedule permanent for Michigan Street Bridge.

There is no current specific drawbridge regulation for the Bayview (State Route 42/57) Bridge, mile 3.0 over Sturgeon Bay Ship Canal. The Bayview Bridge is a twin-leaf bascule drawbridge that provides a vertical clearance of 42 feet when in the lowered position. The drawbridge is currently required to open on signal at all times all year long. The Coast Guard has granted a seasonal yearly winter operating schedule under the provisions of 33 CFR 117.45 from January 1 to March 14 since approximately 1992. W–DOT requested that the Coast Guard implement a permanent winter operating schedule for this drawbridge. W–DOT requested that the Bayview Bridge open for vessels when 12-hours advance notice is provided between December 1 and March 14 each year. The Coast Guard requested copies of bridge opening logs from W–DOT for the Bayview Bridge. The bridge logs revealed that very few openings of the Bayview Bridge had been requested in the month of December during the past three years. The Coast Guard determined that the small number of requested openings at Bayview bridge during the month of December in the three previous years signifies that the request to require 12-hour advance notice between December 1 and March 14 each year would be reasonable. This final rule makes the winter operating schedule permanent.

Discussion of Comments and Changes

One letter was received in response to the NPRM. The letter, from Lake Carriers Association, confirmed the organizations previous statement of no objection to the proposed schedule. No changes to the proposed regulation were made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects minimal public impact from this rule. The operating hours for recreational vessels do not effectively change since the substantive changes occur during winter months when recreational vessel activity has ceased. Commercial vessels have been required to provide 12-hours advance notice prior to passing drawbridges since approximately 1992 with no reported problems.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the drawbridge schedule for small entities remains the same. Only the winter drawbridge schedule has been modified. All vessels may continue to pass the drawbridge once the advance notice is provided during winter months.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. This rule involves modifying or establishing drawbridge operation regulations to reflect standard practices for drawbridge operating schedules during winter months on the Great Lakes, and will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise § 117.1101 to read as follows:

§ 117.1101 Sturgeon Bay.

(a) The draw of the Michigan Street Bridge, mile 4.3 at Sturgeon Bay, shall open as follows:

(1) From March 15 through December 31, the draw need open on signal for recreational vessels only on the hour, 24 hours a day. However, if more than 20 vessels have accumulated at the bridge, or vessels are seeking shelter from severe weather, the bridge shall open on signal.

(2) From January 1 through March 14, the draw shall open on signal if notice is given at least 12 hours in advance of a vessel's time of intended passage.

(b) The draw of the Bayview (SR 42/57) Bridge, mile 3.0 at Sturgeon Bay, shall open as follows:

(1) From March 15 through November 30, the draw shall open on signal.

(2) From December 1 through March 14, the draw shall open on signal if notice is given at least 12 hours in advance of a vessel's time of intended passage.

Dated: October 6, 2005.

R.J. Papp, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 05–21146 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0004; A–1–FRL–7982–3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Consumer Products Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from consumer products. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective December 23, 2005, unless EPA receives adverse comments by November 23, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0004 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–ME–0004,'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1047, *arnold.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

II. Rulemaking Information

This section is organized as follows:

A. What Action Is EPA Taking?

EPA is approving Maine's Chapter 152, ''Control of Emissions of Volatile Organic Compounds from Consumer Products,'' and incorporating this regulation into the Maine SIP.

B. What Are the Requirements of Maine's New Regulation?

Maine's Chapter 152 includes VOC content limits for many categories of consumer products such as deodorants, hairsprays, and glass cleaners. Certain products are, however, exempt from these limits. Specifically, the rule allows the use of innovative products exemptions, variances, or alternative control plans provided that they have been approved by EPA into the Maine SIP. In addition, Chapter 152 includes

the appropriate testing and recordkeeping requirements to ensure compliance with the specified standards. Finally, the rule requires compliance with the specified VOC content limits by May 1, 2005.

C. Why Is EPA Approving Maine's Regulation?

EPA has evaluated Maine's Chapter 152 and has found that this regulation is consistent with EPA guidance and the Ozone Transport Commission (OTC) model rule for consumer products. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a memorandum, dated June 16, 2005, entitled ''Technical Support Document—Maine—Consumer Products Regulation'' (TSD). The TSD and Maine's Chapter 152 are available in the docket supporting this action.

The OTC has developed model rules for several VOC source categories and the OTC states, including Maine, have signed a memorandum of understanding (MOU) committing to adopt these model rules. One of the categories for which a model rule has been developed is consumer products. (See ''OTC Model Rule for Consumer Products,'' issued March 28, 2001, revised November 29, 2001, and April 23, 2002.)

Several other OTC states have also recently adopted a consumer products rule based on the OTC model rule and EPA has already approved some of these states' rules.[1] The emission limits in Maine's rule are identical to those contained in the OTC model rule. These emission limits are at least as stringent as, and in some cases more stringent than, EPA's national consumer products rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' 40 CFR Part 59, Subpart C. Also, Maine's rule includes additional categories of consumer products that are not included in EPA's rule.

Maine did not submit its August 27, 2004 Chapter 152 SIP submittal to meet any specific control requirements under the Clean Air Act. However, subsequently, on June 9, 2005, Maine submitted its 5 percent increment of progress plan which relies on reductions from Chapter 152. In today's action, EPA is approving Chapter 152 because it will strengthen Maine's SIP. EPA will evaluate the reductions Maine is claiming from Chapter 152 in its 5 percent increment of progress plan when the Agency takes action on that plan.

D. What Is the Process for EPA To Approve This SIP Revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective December 23, 2005 without further notice unless the EPA receives adverse comments by November 23, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 23, 2005 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

EPA is approving Maine's Chapter 152, ''Control of Emissions of Volatile Organic Compounds from Consumer Products,'' and incorporating this regulation into the Maine SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

[1] For example, on January 23, 2004, EPA approved New York's consumer products rule (69 FR 3237), and on December 9, 2003, EPA approved Maryland's consumer products rule (68 FR 68523).

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 28, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(57) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 27, 2004, and September 8, 2004.

(i) Incorporation by reference.

(A) Chapter 152 of the Maine Department of Environmental Protection Regulations, ''Control of Emissions of Volatile Organic Compounds from Consumer Products,'' effective in the State of Maine on September 1, 2004.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.1031, Table 52.1031 is amended by adding a new State citation, 152, to read as follows:

§ 52.1031 EPA-approved Maine Regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	**Federal Register** citation	52.1020	
*	*	*	*	*	*	*
152	Control of Emissions of Volatile Organic Compounds from Consumer Products	8/19/04	10/24/05	[Insert FR citation from published date]	(c)(57).	
*	*	*	*	*	*	*

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–21192 Filed 10–21–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–CT–0002; A–1–FRL–7967–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC RACT Orders for Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc.; and Ross & Roberts, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions incorporate volatile organic compound (VOC) reasonably available control technology (RACT) state consent orders into the Connecticut SIP for four facilities: Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc.; and Ross & Roberts, Inc. This action will have a beneficial effect on air quality by reducing VOC emissions which contribute to ground-level ozone formation. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective December 23, 2005, unless EPA receives adverse comments by November 23, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0002 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-

line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–CT–0002,'' David Conroy, Chief, Air Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through Regional Material in EDocket (RME), regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax number (617) 918–0684, e-mail *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. [The Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.]

II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating information in this preamble.

A. What action is EPA taking?

EPA is approving VOC RACT state consent orders issued to the following facilities and incorporating these orders into the Connecticut SIP: Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc. (formerly Danbury Pharmacal); and Ross & Roberts, Inc.

B. What are the requirements in the Connecticut orders?

Consent Order 8229A for the Hitchcock Chair Company requires the wood-furniture manufacturing facility to meet VOC emission limits, work practice standards, and recordkeeping and reporting requirements. The requirements of the order are consistent with EPA's Control Techniques Guideline (CTG) for wood furniture manufacturers.[1] Specifically, the order contains VOC content limits for topcoats and sealers and for spray-booth cleaning. Work practice standards include requirements to develop a written leak inspection and maintenance plan and to conduct training for facility personnel. In addition, the requirements prohibit use of conventional air-spray guns except under specified limited conditions. Recordkeeping and reporting requirements include requirements to maintain records of VOC content and viscosity of topcoats and sealers and of solvent additions, and to submit semiannual compliance reports and compliance certifications to DEP.

Consent Order 8190 for the Kimberly Clark Corporation requires the tissue and healthcare-products manufacturing facility to meet VOC emission limits, monitoring requirements, and recordkeeping and reporting requirements. Specifically, the order contains VOC emissions limits for the tissue-manufacturing machines and the wastewater-treatment process. The facility is required to continue to research and test low VOC-content additives for its manufacturing process, and to submit a biennial report to DEP that summarizes research activities and evaluates the feasibility of switching to lower VOC content additives. In addition, Kimberly Clark must submit annual compliance reports and compliance certifications to DEP.

Consent Order 8200 for Watson Laboratories, Inc., requires the pharmaceutical company to meet VOC emission limits, monitoring requirements, and recordkeeping and reporting requirements. Specifically, the

[1] ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations,'' EPA–453/R–96–007, April 1996.

facility has reformulated some of its coatings and the order requires the facility to continue to use non-VOC coatings and materials when manufacturing several specified products. The order also contains monthly and annual VOC emissions caps and prohibits the facility from using methylene chloride and methanol in the existing process equipment and cleaning of this equipment. Also, the company is required to continue to research the availability of U.S. Food and Drug Administration (FDA) approved non-VOC coatings and materials for any new product produced at the facility. In addition, the facility must maintain records that include a list of coatings and materials used to manufacture specified products, and the amount and method of usage of methylene chloride and methanol. Watson Laboratories must submit annual compliance reports and compliance certifications to DEP.

Consent Order 8237 for Ross & Roberts, Inc. requires the vinyl-sheet products manufacturing business to meet VOC emission limits, monitoring requirements, and recordkeeping and reporting requirements. Specifically, the order includes a limit on the average monthly VOC emissions generated from the facility's calendar lines. Also, the facility is required to continue to use its fiberbed emission control (FEC) system (or DEP- and EPA-approved replacement system) to limit VOC emissions from the calender lines, and to monitor the performance of the FEC system (or its replacement). The facility also must conduct emissions testing, and submit testing results to DEP. In addition, the facility must maintain records that include the weight of material produced in the calender lines, results of VOC emission testing, FEC system performance, and operating time for the calendar equipment and capture and control devices. Watson Labs must submit annual compliance reports and compliance certifications to DEP.

C. Why is EPA approving Connecticut's submittals?

EPA has evaluated the orders issued to Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc.; and Ross & Roberts, Inc., and has found that they are generally consistent with EPA guidance and impose VOC RACT at these facilities. Therefore, EPA is approving these orders as VOC RACT.

The specific requirements of these orders and EPA's evaluation of these requirements are detailed in a memorandum entitled ''Technical Support Document—Connecticut—VOC RACT Orders'' (TSD). The TSD and Connecticut's orders are available in the docket supporting this action.

Previously, Connecticut submitted to EPA Section 22a–174–32 ''Reasonably Available Control Technology (RACT) for volatile organic compounds.'' EPA issued an approval of this rule on October 19, 2000 (65 FR 62620). EPA's approval noted that Connecticut must define explicitly, and have approved by EPA, RACT for all those sources complying with Section 22a–174–32 through options (C) and (D) of the rule. Therefore, the DEP subsequently submitted SIP revisions to EPA for Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc.; and Ross & Roberts, Inc.

D. What is the process for approving these SIP revisions?

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 23, 2005, without further notice unless the Agency receives relevant adverse comments by November 23, 2005.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 23, 2005 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

EPA is approving VOC RACT orders issued to the following facilities and incorporating these orders into the Connecticut SIP: Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc. (formerly Danbury Pharmacal); and Ross & Roberts, Inc.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: August 11, 2005.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(96) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(96) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on April 30, 2002, and October 17, 2002.

(i) Incorporation by reference.

(A) Consent Order No. 8229A issued by the Connecticut Department of Environmental Protection to Hitchcock Chair Company, Ltd., on April 15, 2002.

(B) Consent Order No. 8190 issued by the Connecticut Department of Environmental Protection to Kimberly Clark Corporation on April 23, 2002.

(C) Consent Order No. 8200 issued by the Connecticut Department of Environmental Protection to Watson Laboratories, Inc., on October 3, 2002.

(D) Consent Order No. 8237 issued by the Connecticut Department of Environmental Protection to Ross & Roberts, Inc., on October 4, 2002.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.385, Table 52.385 is amended by adding new entries to existing state citation 22a–174–32 to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		**Federal Register** citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	* *	*	*
22a–174–32	Reasonably available control technology for volatile organic compounds.	4/15/02	10/24/05	[Insert FR citation from published date].	(c)(96)	VOC RACT for Hitchcock Chair.
22a–174–32	Reasonably available control technology for volatile organic compounds.	4/23/01	10/24/05	[Insert FR citation from published date].	(c)(96)	VOC RACT for Kimberly Clark.
22a–174–32	Reasonably available control technology for volatile organic compounds.	10/03/02	10/24/05	[Insert FR citation from published date].	(c)(96)	VOC RACT for Watson Laboratories.
22a–174–32	Reasonably available control technology for volatile organic compounds.	10/04/02	10/24/05	[Insert FR citation from published date].	(c)(96)	VOC RACT for Ross & Roberts.
*	*	*	*	* *	*	*

[FR Doc. 05–21194 Filed 10–21–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7897]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV:				
Tennessee: McNairy County, Unincorporated Areas.	470127	June 16, 1986, Emerg; July 1, 1988, Reg; October 19, 2005, Susp.	10/19/2005	10/19/2005
Region VII:				
Missouri: Alton, City of, Oregon County	290490	May 1, 1975, Emerg; August 4, 1987, Reg; October 19, 2005, Susp.	.....do	Do.
Thayer, City of, Oregon County	290267	June 5, 1975, Emerg; January 1, 1987, Reg; October 19, 2005, Susp.	.....do	Do.

* do=Ditto.
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: October 12, 2005.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 05–21138 Filed 10–21–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7782]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities that are participating and suspended from the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of properties located in the communities listed below.

EFFECTIVE DATES: The effective date for each community is listed in the fourth column of the following tables.

ADDRESSES: Flood insurance policies for properties located in the eligible communities listed below can be obtained from any licensed property insurance agent or broker serving the eligible community or from the NFIP by calling 1–800–638–6620.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance that is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Because the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for properties in these communities.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or Federally-related financial assistance for acquisition or construction of buildings in the SFHAs shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64.

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1.The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State	Location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles: Emergency Program				
Region IV				
Alabama	Brantley, Town of, Crenshaw County.	010055	July 5, 2005	FHBM dated June 4, 1976.
Region VI				
Arkansas	Knoxville, Town of, Johnson County.	050260	July 8, 2005	FHBM dated February 21, 1975.
Region IV				
Tennessee	Van Buren County, Unincorporated Areas.	470342	July 14, 2005	FHBM dated December 1, 1978.
Region I				
Maine	Vassalboro, Town of, Kennebec County.	230248	July 26, 2005	FHBM dated February 7, 1975.
Region VII				
Iowa	Beaman, City of, Grundy County.	190400	July 27, 2005	Never Mapped.
Kansas	Cloud County, Unincorporated Areas.	200058	.....do*	FHBM dated August 23, 1977.
Region VI				
Texas	Round Top, Town of, Fayette County.	480816	August 12, 2005	FHBM dated October 29, 1976.
Region X				
Washington	Republic, Town of, Ferry County.	530042	.....do	Never Mapped.
Region VI				
New Mexico	Lincoln County, Unincorporated Areas.	350122	August 15, 2005	FHBM dated March 28, 1978.
Texas	Leonard, City of, Fannin County.	480812	.....do	Never Mapped. Includes annexed area of Fannin County (CID 480807) FIRM panel 0010B, dated December 1, 2004.
Region VII				
Iowa	Cromwell, City of, Union County.	190519	.....do	FHBM dated June 25, 1976.
Do	Grundy Center, City of, Grundy County.	190403	.....do	FHBM dated July 2, 1976.
Do	Shannon City, City of, Union County.	190521	.....do	FHBM dated August 13, 1976.
Region VII				
Kansas	Goessel, City of, Marion County.	200206	August 24, 2005	FHBM dated November 22, 1974.
Region VIII				
North Dakota	La Moure County, Unincorporated Areas.	380086	August 29, 2005	Never Mapped.
Region IV				
Alabama	Sylvania, Town of, DeKalb County.	010364	September 4, 2005	FHBM dated October 29, 1976.
Region IV				
Georgia	Franklin County, Unincorporated Areas.	130659	September 19, 2005	Never Mapped.
New Eligibles: Regular Program				
Region VII				
Missouri	**Caldwell County, Unincorporated Areas.	290788	July 5, 2005	July 5, 2005.
Region IV				
Florida	Alford, Town of, Jackson County.	120580	July 14, 2005	Use Jackson County (CID 120125) FIRM panel 0225C, dated December 15, 1990.
Region I				
New Hampshire	**Madison, Town of, Carroll County.	330220	August 1, 2005	FHBM dated January 17, 1975, converted to FIRM by letter August 1, 2005.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Region IV				
Kentucky	**Letcher County, Unincorporated Areas.	210289	.....do	FHBM dated September 2, 1977, converted to FIRM by letter August 1, 2005.
Region VII				
Missouri	**Lake Ozark, City of, Camden County.	290698	.....do	FHBM dated July 26, 1977, converted to FIRM by letter August 1, 2005.
Region VI				
Texas	Sansom Park, City of, Tarrant County.	480611	August 12, 2005	Use Tarrant County (CID 480582) FIRM panel 0270J, dated August 23, 2000.
Oklahoma	Arcadia, Town of, Oklahoma County.	400551	August 15, 2005	Use Oklahoma County (CID 400466) FIRM panel 0115G, dated July 2, 2002.
Do	Hennessey, Town of, Kingfisher County.	400389	August 26, 2005	Use Kingfisher County (CID 400471) FIRM panel 0185C, dated May 5, 2003.
Region VII				
Nebraska	Boyd County, Unincorporated Areas.	310417	August 18, 2005	August 18, 2005.
Region IV				
Florida	**Otter Creek, City of, Levy County.	120592	September 1, 2005	FHBM dated August 17, 1979, converted to FIRM by letter September 1, 2005.
Georgia	**Coolidge, City of, Thomas County.	130169	.....do	FHBM dated April 2, 1976, converted to FIRM by letter September 1, 2005.
Region VII				
Nebraska	**Burt County, Unincorporated Areas.	310420	.....do	FHBM dated November 22, 1977, converted to FIRM by letter September 1, 2005.
Region IV				
Alabama	South Vinemont, Town of, Cullman County.	010365	September 4, 2005	December 2, 2004.
Do	Tallapoosa County, Unincorporated Areas.	010326	September 15, 2005	June 17, 1991.
North Carolina	Montreat, Town of, Buncombe County.	370476	September 19, 2005	NSFHA.
Reinstatements				
Region V				
Ohio	Harbor View, Village of, Lucas County.	390702	July 5, 2005	Use Lucas County (CID 390359) FIRM panel 0105D, dated October 6, 2000.
Region VII				
Nebraska	Pawnee City, City of, Pawnee County.	310170	July 12, 2005	July 5, 2005.
Region V				
Minnesota	Minnetonka Beach, City of, Hennepin County.	270174	July 29, 2005	September 2, 2004.
Region IV				
Alabama	Pennington, Town of, Choctaw County.	010035	September 4, 2005	September 18, 1985. Includes annexed area of Choctaw County (CID 010310) FIRM Panel 0175C, dated September 30, 1988.
Region I				
New Hampshire	Middleton, Town of, Strafford County.	330222	September 30, 2005	May 17, 2005.

State	Location	Community No.	Effective date of eligibility	Current effective map date
		Withdrawals		
		Suspensions		
Region VII				
Nebraska	Pawnee City, City of, Pawnee County.	310170	June 4, 1975, Emerg; August 1, 1986, Reg; July 6, 2005, Susp.	July 5, 2005.
Region VI				
Oklahoma	Grady County, Unincorporated areas.	400483	September 17, 1985, Emerg; September 1, 1987, Reg; July 20, 2005, Susp.	July 19, 2005.
Region VII				
Nebraska	Crofton, City of, Knox County	310361	July 9, 1976, Emerg; September 1, 1986, Reg; August 19, 2005, Susp.	August 19, 2005.
Missouri	Argyle, Village of, Osage County.	290491	May 13, 1974, Emerg; August 1, 1986, Reg; September 3, 2005, Susp.	September 2, 2005.
Do	Westphalia, City of, Osage County.	290272	March 16, 1976, Emerg; September 10, 1984, Reg; September 3, 2005, Susp.	Do.
Nebraska	Perkins County, Incorporated Areas.	310464	June 15, 2001, Emerg; June 15, 2001, Reg; September 3, 2005, Susp.	Do.
Region II				
New Jersey	East Rutherford, Borough of, Bergen County.	340028	June 24, 1975, Emerg; December 16, 1980, Reg; October 3, 2005, Susp.	September 30, 2005.
		Probation		
Region V				
Illinois	Jersey County, Unincorporated Areas.	170312	July 15, 2005, Probation Lifted.	February 1, 1984.
		Suspension Rescissions		
Indiana	Beech Grove, City of, Marion County.	180158	July 5, 2005, Suspension Notice Rescinded.	July 5, 2005.
Do	Southport, City of, Marion County.	180161	.....do	Do.
Region VII				
Missouri	Caldwell County, Unincorporated Areas.	290788	.....do	Do.
Nebraska	Table Rock, Village of, Pawnee County.	310172	.....do	Do.
Region VI				
Oklahoma	McClain County, Unincorporated Areas.	400538	July 19, 2005, Suspension Notice Rescinded.	July 19, 2005.
Region VIII				
North Dakota	Bismarck, City of, Burleigh County.	380149	.....do	Do.
Region VII				
Nebraska	Bristow, Village of, Boyd County.	310012	August 18, 2005, Suspension Notice Rescinded.	August 18, 2005.
Do	Creighton, City of, Knox County.	310360	.....do	Do.
Do	Lynch, Village of, Boyd County.	310013	.....do	Do.
Do	Niobrara, Village of, Knox County.	310132	.....do	Do.
Do	Spencer, Village of, Boyd County.	310399	.....do	Do.
Do	Verdigre, Village of, Knox County.	310133	.....do	Do.
Region VI				
Texas	Midland, City of, Midland County.	480477	September 16, 2005, Suspension Notice Rescinded.	September 16, 2005.
Do	Midland County, Unincorporated Areas.	481239	.....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Odessa, City of, Midland County.	480206	.....do	Do.
Region IX				
Hawaii	Kauai County, All Jurisdictions	150002	.....do	Do.

* do = Ditto.
** Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.
Code for reading fourth and fifth columns: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA.-Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 12, 2005.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 05–21139 Filed 10–21–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040830250–5109–04; I.D. 101805C]

Fisheries off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; End of the Pacific Whiting Primary Season for the Catcher/processor Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 2005 Pacific whiting (whiting) primary season for the catcher/processor sector at 1800 local time (l.t.) October 18, 2005, because the allocation for the catcher/processor will be reached by that time. This action is intended to keep the harvest of whiting within the 2005 allocation levels.

DATES: Effective from October 18, 2005, until the start of the 2006 primary season for the catcher-processor sector, unless modified, superseded or rescinded. Comments will be accepted through November 8, 2005.

ADDRESSES: You may submit comments, identified by I.D. 101805C, by any of the following methods:

- E-mail: *WhitingCPclosure05.nwr@noaa.gov* Include I.D. 101805C in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Becky Renko.
- Mail: D. Robert Lohn, Administrator, Northwest Region,NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

The 2005 non-tribal commercial OY for whiting is 232,069 mt (this is calculated by deducting the 35,000–mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 269,069 mt total catch OY). Regulations at 50 CFR 660.323(a) divide the commercial whiting OY into separate allocations for the catcher/processor, mothership, and shore-based sectors. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shore-based sector is composed of vessels that harvest whiting for delivery to land-based processors. Each commercial sector receives a portion of the commercial OY. For 2005, the catcher/processors received 34 percent (78,903 mt), the mothership sector received 24 percent (55,696 mt), and the shore-based sector received 42 percent (97,469 mt).

Regulations at 50 CFR 660.373(b) describe the primary season for mothership processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher-processor sector. When each sector's allocation is reached, the primary season for that sector is ended.

NMFS Action

This action announces achievement of the allocation for the catcher/processor sector only. The best available information on October 17, 2005, indicated that the catcher/processor allocation would be reached by October 18, 2005, at which time the primary season for the catcher/processor sector ends.

For the reasons stated here and in accordance with the regulations at 50 CFR 660.373(b), NMFS herein announces that effective October 18, 2005, further taking and retaining, receiving or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the mothership sector allocation. A delay to provide a cooling off period also would be expected to cause the fishery to exceed its allocation. Therefore, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.373 (b) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 05–21182 Filed 10–19–05; 11:35 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 204
Monday, October 24, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–PS–2006–001]

Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability.

SUMMARY: The Department of Energy (DOE or Department) Building Technologies Program will hold a public meeting to discuss appliance standards scheduling issues. The Department is interested in receiving comments on the Department's desire to bring all appliance rulemaking activities into compliance with the applicable statutory requirements. The Department will finalize its standards scheduling plan after consideration of comments received during and following the public meeting.

DATES: The Department will hold a public meeting on Tuesday, November 15, 2005, from 9 a.m. to 4 p.m. Please submit written comments by Thursday, December 15, 2005.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

The DOE Web site at *http://www.eere.energy.gov/buildings/appliance_standards/2006_schedule_setting* contains background information, including: The list of rulemaking activities; summary data sheets for affected products; analysis spreadsheets; and other information.

The Department welcomes your participation at the meeting as well as written comments. Written comments, data, and information regarding scheduling issues will be accepted no later than the date provided in the **DATES** section.

You may submit comments, identified for the 2006 Appliance Standards Schedule Setting, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: schedulesetting2006@ee.doe.gov.* Include 2006 Appliance Standards Schedule Setting in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 2006 Appliance Standards Schedule Setting, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original.
- *Hand delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 2006 Appliance Standards Schedule Setting, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions received must include the agency name and reference the 2006 Appliance Standards Schedule Setting. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) format file; avoid the use of special characters or any form of encryption; and, wherever possible, include the electronic signature of the author. If you don't include an electronic signature, you must authenticate comments by thereafter submitting the signed original paper document. No telefacsimiles (telefaxes) will be accepted.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 Resources Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Linda Graves, Esq., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1851, e-mail: *Linda.Graves@ee.doe.gov*, or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Francine.Pinto@hq.doe.gov,* or *Thomas.DePriest@hq.doe.gov,* respectively.

SUPPLEMENTARY INFORMATION: The Department invites your participation in a public meeting to address how the Department will develop and implement a full compliance scheduling plan for appliance standards rulemaking activities. The Department particularly welcomes your perspective and assistance with respect to scheduling activities, given the enormous, competing demands on its resources.

The meeting will be conducted in an informal, conference style. There will not be any discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the meeting and expiration of the period for submitting written statements, the Department will consider the comments received.

If you would like to participate in the meeting or be added to the DOE mailing list to receive future notices and information regarding the energy conservation program for consumer products and commercial and industrial equipment, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on October 19, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 05–21248 Filed 10–20–05; 9:07 am]

BILLING CODE 6450–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

Production of Records and Testimony of Personnel of the Export-Import Bank of the United States in Legal Proceedings

AGENCY: Export-Import Bank of the United States (''Ex-Im Bank'').

ACTION: Proposed rule.

SUMMARY: Ex-Im Bank is issuing a proposed regulation that would establish policy and prescribe procedures with respect to the testimony of Ex-Im Bank personnel, both current and former, and the production of agency records, in legal proceedings. The proposed regulation is designed to balance concerns such as preserving the time of Ex-Im Bank personnel for the conduct of official business against concerns such as whether the disclosure of information requested is necessary to prevent fraud or injustice.

DATES: Comments due by November 23, 2005.

ADDRESSES: Office of the General Counsel, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Brian J. Sonfield, Assistant General Counsel for Administration, Export Import Bank of the United States, Phone: (202) 565–3439/Fax: (202) 565–3586.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301 of title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. The Supreme Court has interpreted this statute as allowing Federal agencies to promulgate regulations under the authority of section 301 establishing procedures governing the production of records and testimony by federal agency personnel in legal proceedings in which the agency is not a party. *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

Ex-Im Bank frequently receives demands for: (1) Testimony of its employees or (2) the production of agency records—in legal proceedings to which Ex-Im Bank is not a party. Ex-Im Bank currently does not have any regulations or procedures to address this situation.

II. Analysis of Proposed Regulation

The proposed rule is designed to establish centralized Ex-Im Bank policies and procedures to govern the production of agency records and testimony regarding information acquired in the course of the performance of official duties by current and former Ex-Im Bank personnel in legal proceedings before Federal, state, and local entities (as specified in the proposed regulation) in which Ex-Im Bank (i) Is not a party; (ii) is not represented; (iii) does not have a direct and substantial interest; and (iv) is not providing representation to an individual or entity that is a party. The proposed rule does not cover requests for information that are not part of legal proceedings, such as requests for records under the Freedom of Information Act, 5 U.S.C. 552.

The proposed regulation is intended to address Ex-Im Bank's need to conserve official personnel resources for the performance of the agency's statutory duties while at the same time accommodating legitimate requests or demands for official records or testimony to the extent possible. The procedures established would also provide necessary internal controls for management of Ex-Im Bank personnel on official duty and for release of Ex-Im Bank records and information.

This proposed regulation would not authorize any Ex-Im Bank personnel to refuse to comply with the law. Rather, the proposed regulation would permit Ex-Im Bank personnel, under certain circumstances, to refuse to comply with a party to litigation's demand or a court order due to: (1) Incomplete compliance with this proposed rule; or (2) a determination by the General Counsel that a challenge to, or immediate review of, the demand or order is legally appropriate.

These procedures would not infringe upon the judiciary or create new privileges not previously recognized by law, but would simply make uniform a process of responding to each request or demand for the production of records or testimony by Ex-Im Bank personnel in private controversies. Further, these procedures would not impede Ex-Im Bank personnel's access to the courts in relation to legal matters unrelated to their official duties or not involving the official records of Ex-Im Bank.

III. Matters of Regulatory Procedure

Administrative Procedure Act

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 30-day comment period. Interested persons are invited to submit written comments to Ex-Im Bank on this proposed regulation, to be received within 30 days of publication of the proposed rule. Prior to issuing its final rule, Ex-Im Bank will review all comments received and consider any modifications to this proposal that appear warranted.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule,'' as defined by the Small Business Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C., chapter 25, subchapter II), this proposed rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation).

List of Subjects in 12 CFR Part 404

Administrative practice and procedure, Government employees, Information, Records.

Authority: 5 U.S.C. 552 and 552a.

Accordingly, for the reasons set forth in the preamble, the Export-Import Bank of the United States proposes to amend 12 CFR part 404 as follows:

PART 404—[AMENDED]

1. The authority citation for part 404 is revised to read as follows:

Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Section 404.21 also issued under 5 U.S.C. 552a.

Note Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

2. Subpart C is added to read as follows:

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

Sec.

§ 404.24 General provisions.

(a) *Purpose.* This subpart establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records of Ex-Im Bank in all legal proceedings to which Ex-Im Bank is not a party;

(2) Demands for testimony of Ex-Im Bank personnel related to information acquired as a result of performance of their official duties, or by virtue of their official status, in all legal proceedings where Ex-Im Bank is not a party; and

(3) The offer of expert or opinion testimony by Ex-Im Bank personnel regarding matters related to the performance of their official duties.

(b) *Policy.* Ex-Im Bank seeks to further the following goals in enacting this subpart:

(1) Conservation of agency resources for official business;

(2) Minimization of agency involvement in controversial issues unrelated to its mission;

(3) Maintenance of the agency's impartiality amongst private litigants;

(4) Protection of confidential and/or sensitive information; and

(5) Maintenance of the integrity of the agency's deliberative processes.

§ 404.25 Applicability.

This subpart applies exclusively to demands for testimony and/or production of records issued to Ex-Im Bank personnel, in connection with legal proceedings to which Ex-Im Bank is not a party, regarding information acquired in the course of the performance of official duties or due to their official status. Nothing in this subpart shall be construed to waive the sovereign immunity of the United States.

This subpart shall not apply to the following:

(a) Demands for testimony and/or production of records pursuant to a legal proceeding to which Ex-Im Bank is a party;

(b) Demands for testimony and/or production of records in those instances in which Ex-Im Bank personnel are asked to disclose information wholly unrelated to their official duties; and

(c) Congressional demands and requests for testimony or records.

§ 404.26 Definitions.

For purposes of this subpart, the following definitions shall apply—

Demand—includes an order, subpoena, or other compulsory process issued by a party in litigation or a court of competent jurisdiction, requiring the production or release of Ex-Im Bank information or records, or requiring the testimony of Ex-Im Bank personnel.

Ex-Im Bank personnel—includes any current or former officer or employee of Ex-Im Bank, including all individuals who have been appointed by, or subject to, the official supervision, jurisdiction, or control of any Ex-Im Bank employees. This definition encompasses all individuals hired through contractual agreements with Ex-Im Bank, such as: consultants, contractors, sub-contractors, and their employees.

Legal proceeding—a case or controversy pending before any federal, state, or local court, including a grand jury proceeding; a proceeding before a federal, state, or local administrative judge, board, or other similar body with adjudicative powers; or a legislative proceeding before a state or local legislative body.

Records—all documentary materials that Ex-Im Bank creates or receives in connection with the transaction of official business, including any materials classified as ''Federal records'' under 44 U.S.C. 3301 and its implementing regulations.

Testimony—written or oral statements, including, but not limited to, depositions, answers to interrogatories, affidavits, declarations, and any other statements made in a legal proceeding, including any expert or opinion testimony.

§ 404.27 Demand requirements.

A party's demand for testimony and/or production of records by Ex-Im Bank personnel regarding information acquired in the course of their performance of official duties or due to their official status shall be set forth in, or accompanied by, a signed affidavit or other written statement. Such affidavit or written statement must be submitted at least 30 days prior to the date such testimony and/or production of records is requested to be taken and/or produced. A copy of the affidavit or written statement shall be served on the other parties to the legal proceeding. The affidavit or written statement must:

(a) Be addressed to the Export Import Bank of the United States, Office of the General Counsel, 811 Vermont Ave., NW., Washington, DC 20571;

(b) State the nature of the legal proceeding, including any docket number, title of the case, and the name of the administrative or adjudicative body before which the proceedings are to be heard;

(c) State the nature of the testimony or records sought;

(d) State the relevance of the information sought to the legal proceedings;

(e) State why such information can only be obtained through testimony or production of records by Ex-Im Bank personnel; and

(f) Comply with all procedures governing valid service of process.

§ 404.28 Notification of General Counsel required.

Ex-Im Bank personnel receiving a demand for testimony and/or production of records regarding information acquired in the course of their performance of official duties, or due to their official status, shall immediately notify the General Counsel of Ex-Im Bank (''General Counsel'') upon receipt of such demand. The General Counsel maintains the exclusive authority to waive the requirements of any or all sections of this subpart and reserves the right to delegate his or her authority under this subpart to other appropriate Ex-Im Bank personnel.

§ 404.29 Restrictions on testimony and production of records.

Ex-Im Bank personnel may not provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, in connection with any legal proceeding to which this subpart applies, without authorization by the General Counsel. Such authorization must be in writing, unless the General Counsel determines that circumstances warrant an oral authorization, and such oral authorization is subsequently documented.

§ 404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.

In determining whether to authorize Ex-Im Bank personnel to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, the General Counsel may consider factors including, but not limited to, the following:

(a) Efficiency—the conservation of the time and resources of Ex-Im Bank personnel for the conduct of official business;

(b) Undue burden—whether the demand creates an undue burden upon Ex-Im Bank or is otherwise inappropriate under any applicable administrative or court rules;

(c) Appearance of bias—whether the testimony and/or production of records could result in the public perception that Ex-Im Bank is favoring one party over another, or advocating the position of a party to the proceeding;

(d) Furtherance of agency policy—whether the testimony and/or production of records is consistent with the policy and mission of the Ex-Im Bank;

(e) Prevention of fraud or injustice—whether the disclosure of the information requested is necessary to prevent the perpetration of fraud or injustice;

(f) Relevance to litigation—whether the testimony and/or production of records sought is relevant to the subject litigation;

(g) Necessity—whether the testimony and/or production of records, including a release of such in camera, is appropriate or necessary as determined by either the procedural rules governing the legal proceeding, or according to the relevant laws concerning privilege;

(h) Availability from another source—whether the information sought through testimony or production of records is available from another source;

(i) Violations of laws or regulations—whether the testimony and/or production of records would violate a statute, regulation, executive order, or other official directive;

(j) Classified information—whether the testimony and/or production of records would improperly reveal information classified pursuant to applicable statute or Executive Order; and

(k) Compromise of rights and interests—whether the testimony and/or production of records would compromise any of the following: law enforcement interests, constitutional rights, national security interests,, foreign policy interests, or the confidentiality of commercial and/or financial information.

§ 404.31 Procedure for declining to testify and/or produce records.

Ex-Im Bank personnel receiving a demand to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, and who have not received written authorization from the General Counsel to provide such information, shall:

(a) Respectfully decline to answer or appear for examination on the grounds that such testimony is forbidden by this subpart;

(b) Request the opportunity to consult with the General Counsel;

(c) Explain that only upon consultation may they be granted approval to provide such testimony;

(d) Explain that providing such testimony or records absent approval may subject the individual to criminal liability under 18 U.S.C. 641, as well as other applicable laws, and other disciplinary action; and

(e) Request a stay of the request or demand pending a determination by the General Counsel.

§ 404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before a determination has been rendered by the General Counsel, the U.S. Attorney or such other attorney as may be designated for the purpose will appear with the Ex-Im Bank personnel upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending determination by the General Counsel.

§ 404.33 Procedure in the event of an adverse ruling.

If the court of other authority declines to stay the effect of the demand in response to a request made in accordance with § 404.32 pending a determination by the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462).

§ 404.34 Procedure for demands for testimony or production of documents regarding confidential information.

In addition to compliance with the requirements of this subpart, demands to provide testimony and/or produce records that concern information protected by the Privacy Act, 5 U.S.C. 552a, or any other authority mandating confidentiality of certain classes of records or information, must also satisfy the requirements for disclosure imposed by such authority before records may be produced or testimony given.

§ 404.35 Procedures for requests for Ex-Im Bank employees to provide expert or opinion testimony.

No Ex-Im Bank personnel may, unless specifically authorized by the General Counsel, testify in any legal proceeding as an expert or opinion witness as to any matter related to his or her duties or the functions of the Ex-Im Bank, including the meaning of Ex-Im Bank documents. Any demand for expert or opinion testimony shall comply with the policies and procedures outlined in this subpart.

§ 404.36 No private right of action.

Nothing in this subpart shall be construed as creating any right, substantive or procedural, enforceable at law or equity by a party against Ex-Im Bank or the United States.

Dated: October 18, 2005.

Howard A. Schweitzer,

General Counsel (Acting), Export Import Bank of the United States.

[FR Doc. 05–21147 Filed 10–21–05; 8:45 am]

BILLING CODE 6690—01—M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22055; Directorate Identifier 2005–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Model CF6–80C2D1F Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company Model CF6–80C2D1F turbofan engines. This proposed AD would require modifying the latching system of the fan reverser. This proposed AD results from 13 reports of released thrust reverser hardware. We are proposing this AD to prevent release of the thrust reverser cascade on landing, which could result in runway debris and a possible hazard to other aircraft.

DATES: We must receive any comments on this proposed AD by November 23, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, telephone: (410) 682–0094; fax: (410) 682–0100.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22055; Directorate Identifier 2005–NE–31–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DOT docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

Discussion

The FAA has received 13 reports of thrust reverser hardware released on landing. The first event occurred in January 1997. With the existing design for the forward lower latch, an operator can inadvertently close a fan reverser half with the lower latch handle in the closed position. When this happens, the barrel nut of the lower latch assembly can ride over the clevis, mounted on the engine fan case, without engaging the clevis. When it is in this position, the lower latch assembly appears engaged when it isn't. Because the barrel nut assembly of the lower latch might be spring-loaded against the engine fan case, the fan cowl door can close without engaging the lower latch assembly. All of the incidents occurred on CF6–80C2D1F engines installed on McDonnell Douglas MD–11 airplanes. Investigations show the design of those applications contributes to the failures of the fan reversers. The Middle Rivers Aircraft Systems (MRAS) (a subsidiary of the General Electric Company) issued four service bulletins to address the problem. However, several operators of McDonnell Douglas MD–11 airplanes haven't incorporated the recommendations of those service bulletins. As a result, three incidents occurred from March 2004 through October 2004. This condition, if not corrected, could result in release of the thrust reverser cascade on landing, which could result in runway debris and a possible hazard to other aircraft.

Relevant Service Information

We have reviewed and approved the technical contents of the following MRAS service bulletins (SBs):

• CF6–80C2 S/B 78–1068, Revision 2, dated May 16, 2005, and CF6–80C2 S/B 78–1077, Revision 1, dated May 16, 2005, that describe procedures for modifying the latching system of the fan reverser.

• SB CF6–80C2 S/B 78–1078, Revision 1, dated May 16, 2005, that describe procedures for replacing the existing L-shaped brackets or the upper and lower ends of the upper latch operating cable.

• SB CF6–80C2 S/B 78–1088, Revision 5, dated May 16, 2005, that describe procedures for installing the new improved fan reverser upper latch.

Differences Between the Proposed AD and the Manufacturer's Service Information

Middle River Aircraft Systems SB's CF6–80C2 S/B 78–1068, Revision 2, dated May 16, 2005; CF6–80C2 S/B 78–1077, Revision 1, dated May 16, 2005; and CF6–80C2 S/B 78–1078, Revision 1, dated May 16, 2005; apply to CF6–80C2 series engines. This proposed AD applies to the CF6–80C2D1F engine installed on the McDonnell Douglas MD–11 airplanes only.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

• Modifying the latching system of the fan reverser at the next normally scheduled maintenance period, or within 1,200 flight hours time-in-service (TIS) after the effective date of the proposed AD, whichever occurs first; and

• Replacing the existing L-shaped support brackets of the upper and lower ends of the upper latch operating cable at the next normally scheduled maintenance period, or within 6,000 flight hours TIS after the effective date of the proposed AD, whichever occurs first; and

• Installing the new improved fan reverser upper latch at the next normally scheduled maintenance period, or within 6,000 flight hours TIS after the effective date of the proposed AD, whichever occurs first.

The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 339 General Electric Company CF6–80C2D1F2 turbofan engines of the affected design in the worldwide fleet. We estimate that this proposed AD would affect 138 engines installed on airplanes of U.S. registry. We also estimate that it would take

approximately 19 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $6,644 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,087,302.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

General Electric Corporation: Docket No. FAA–2005–22055; Directorate Identifier 2005–NE–31–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company Model CF6–80C2D1F turbofan engines. These engines are installed on, but not limited to, McDonnell Douglas Corporation MD–11 airplanes.

Unsafe Condition

(d) This AD results from 13 reports of released thrust reverser hardware. We are issuing this AD to prevent release of the thrust reverser cascade on landing, which could result in runway debris and a possible hazard to other aircraft.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Modifying the Latching System of the Fan Reverser

(f) At the next normally scheduled maintenance period or within 1,200 flight hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, modify the latching system of the fan reverser. Use the Accomplishment Instructions of Middle River Aircraft Systems (MRAS) service bulletins (SBs) CF6–80C2 S/B 78–1068, Revision 2, or CF6–80C2 S/B 78–1077, Revision 1, both dated May 16, 2005 to modify the latch assembly.

Replacing the L-Shaped Support Brackets

(g) At the next normally scheduled maintenance period or within 6,000 flight hours TIS after the effective date of this AD, whichever occurs first, replace the existing L-shaped support brackets of the upper and lower ends of the upper latch operating cable with improved T-shaped support brackets. Use the Accomplishment Instructions of MRAS SB CF6–80C2 S/B 78–1078, Revision 1, dated May 16, 2005 to replace the support brackets.

Installing the Improved Upper Latch of the Fan Reverser

(h) At the next normally scheduled maintenance period or within 6,000 flight hours TIS after the effective date of this AD, whichever occurs first, install the improved upper latch of the fan reverser. Use the Accomplishment Instructions of MRAS SB CF6–80C2 S/B 78–1088, Revision 5, dated May 16, 2005 to install the upper latch.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on October 13, 2005.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–21174 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 404

RIN 1215–AB49

Labor Organization Officer and Employee Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for comments on the proposed rule published on August 29, 2005. The proposed rule would revise the financial reports (Form LM–30) required to be filed by union officers and employees under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The comment period, which was to expire on October 28, 2005, is extended ninety days to January 26, 2006.

DATES: Comments on the proposed rule published on August 29, 2005 (70 FR 51166) must be received on or before January 26, 2006.

ADDRESSES: You may submit comments, identified by RIN 1215–AB49, by any of the following methods:

E-mail: OLMS-REG-1215-AB49@dol.gov

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (OLMS).

Mail: Mailed comments should be sent to Kay Oshel, Director of the Office of Policy, Reports and Disclosure Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N 5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, you should take this into consideration when preparing to meet the deadline for submitting comments.

OLMS recommends that you confirm receipt of your comment by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at: Kay H. Oshel, U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number), (800) 877–8339 (TTY/TDD), E-mail: *OLMS-REG-1215-AB49@dol.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2005 (70 FR 51166), the Department published a notice of proposed rulemaking that would revise the forms that officers and employees of labor organizations are required to file under the LMRDA.

Interested persons were invited to submit comments on or before October 28, 2005, 60 days after the publication of the notice. Based on separate requests by the American Federation of Labor and Congress of Industrial Organizations and the United Brotherhood of Carpenters and Joiners of America for additional time to prepare comments, the Department has decided to extend the comment period for an additional ninety days.

The proposed rule, including revisions to the Form LM–30 and its instructions, is available on the Web site maintained by OLMS at *http://www.olms.dol.gov.* (Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, at *olms-mail@dol-esa.gov,* or at (202) 693–0122 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Signed at Washington, DC, this 19 day of October, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 05–21274 Filed 10–21–05; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

RIN 0710–AA63

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps is proposing to amend the regulations for lockage operations at Bonneville Lock and Dam and amend the regulations which establish the restricted areas at Little Goose Lock and Dam. The Corps is making corrections and adjustments to the lockage control, signals, and permissible dimensions of vessels for Bonneville Lock and Dam. These changes correct language for the new replacement lock. For the Little Goose Lock and Dam the Corps is making adjustments in the upstream channel restricted area boundary to provide a recreational craft corridor along the north shoreline. This will provide better boat ramp access in support of the small craft portage route and reduce interference between fisherman and the boat ramp.

DATES: Comments must be submitted on or before December 8, 2005.

ADDRESSES: Written comments should be sent to the U.S. Army Corps of Engineers, ATTN: CECW–NWD, 441 G Street NW., Washington, DC 20314–1000. Comments may also be faxed to (202) 761–5096 or e-mail to: *Ken.C.Hall@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hall, Program Manager, CECW-NWD at (202) 761–4717, or Brian Schmidtke, (503) 808–4333 for Bonneville Lock and Dam or Ms. Ann Glassley at (509) 527–7115 for Little Goose Lock and Dam.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 4, 7, and 28 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR part 207.718. The Corps is proposing to amend the regulations in 33 CFR part 207.718 (b), (d)(3), (e), (f)(1), (j) and (w)(7). Paragraph (b) changes the description of the limits of the approach channels at Bonneville Lock and Dam. Paragraph (d)(3) deletes the Bonneville Lock and Dam specific exception referring to vessels entering under an amber light. This provides consistent entering and exiting signals for the entire Columbia/Snake lock and dam system. Paragraph (e) had several changes. The new paragraph deletes the Bonneville specific exception on useable chamber size. The new paragraph adds text detailing the Bonneville Lock and Dam staff gauges, sill elevations, and how to compute depth over the sill, since Bonneville's staff gauges are different from all other Columbia/Snake lock and dams that directly read depth over the sill. The new paragraph replaces a sentence referring to vessel draft so it refers to depth over the sill and not staff gauge readings. This change makes the sentence correct for all Columbia/Snake locks including Bonneville. The new paragraph corrects the minimum depth over the sill at Bonneville Lock and Dam at 19 feet. The new paragraph deletes three sentences concerning rearrangement of tows specifically at Bonneville Lock and Dam, and the new paragraph deletes one sentence concerning inundation of the downstream guide wall at Bonneville Lock and Dam. Paragraph (f)(1) corrects grammar by changing the last word from ''sections'' to ''section.'' Paragraph (j) includes grammatical changes and corrects and details the location of the downstream mooring facility at Bonneville Lock and Dam. This new paragraph also deletes reference to vessels being allowed to lay-to against the upstream guide wall at Bonneville Lock and Dam. Paragraph (w)(7) revises the upstream restricted area of Little Goose Lock and Dam to allow less interference between fisherman and the boat ramp on the north river bank as more small craft portaging is expected coinciding with the Lewis and Cark bicentennial. The regulation governing

the navigation locks and approach channels, Columbia and Snake Rivers, Washington and Oregon, 33 CFR 207.718 was adopted on January 23, 1978 (43 FR 3115). The last amendment to 33 CFR 207.718 January 26, 2000 (65 FR 4125). This proposed rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this proposed rule would not have a significant impact on small business entities.

List of Subjects in 33 CFR Part 207

Navigation (water), Vessels, Water Transportation, Danger Zones.

Dated: October 11, 2005.

Gerald W. Barnes,

Chief, Operations, Directorate of Civil Works.

For the reasons stated above, the Corps proposes to amend 33 CFR part 207 as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Amend § 207.718 by revising paragraphs (b), (d)(3), (e), (f)(1), (j) and (w)(7) to read as follows.

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oreg. and Wash.

* * * * *

(b) *Lockage control.* The Lock Master shall be charged with immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. Upstream and downstream approach channels extend to the end of the wing or the guide wall, whichever is longer. At Bonneville lock the upstream approach channel extends to the mooring tie offs at Fort Rains and the downstream approach channel extends to the downstream tip of Robins Island. The Lock Master shall demand compliance with all laws, rules and regulations for the use of the lock and lock area and is authorized to issue necessary orders and directions, both to employees of the Government or to other persons within the limits of the lock or lock area, whether navigating the lock or not. Use of lock facilities is contingent upon compliance with regulations, Lock Master instructions and the safety of people and property.

* * * * *

(d) * * *

(3) *Entering and exit signals.* Signal lights are located outside each lock gate. When the green (go) light is on, all vessels will enter in the sequence prescribed by the Lock Master. When the red (stop) light is on, the lock is not ready for entrance and vessels shall stand clear. In addition to the above visual signals, the Lock Master will signal that the lock is ready for entrance by sounding one long blast on the lock air horn. The Lock Master will signal that the lock is ready for exit by lighting the green exit light and sounding one short blast on the air horn.

* * * * *

(e) *Permissible dimensions of vessels.* Nominal overall dimensions of vessels allowed in the lock chamber are 84 feet wide and 650 feet long. Depth of water in the lock depends upon river levels which may vary from day to day. Staff gauges showing the minimum water level depth over gate sills are located inside the lock chamber near each lock gate and outside the lock chamber near the end of both upstream and downstream guide walls, except at Bonneville where the staff gauges show water levels in feet above MSL and are located on the southern guide walls at the upstream and downstream miter gates. Bonneville's upstream sill elevation is 51 feet MSL and the downstream sill elevation is—12 feet MSL. Depth over sill at Bonneville is determined by subtracting the sill elevation from the gauge reading. Vessels shall not enter the navigation lock unless the vessel draft is at least one foot less than the water depth over the sill. Information concerning allowable draft for vessel passage through the locks may be obtained from the Lock Master. Minimum lock chamber water level depth is 15 feet except at Ice Harbor where it is 14 feet and at Bonneville where it is 19 feet. When the river flow at Lower Granite exceeds 330,000 cubic feet per second the normal minimum 15-foot depth may be decreased to as little as eight feet.

* * * * *

(f) * * *

(1) When a recreational vessel lockage schedule is in effect, at the appointed time for lockage of recreation craft, recreation craft shall take precedence; however, commercial vessels may be locked through with recreation craft if safety and space permit. At other than the appointed time, the lockage of commercial and tow vessels shall take precedence and recreational craft may (only) lock through with commercial vessels only as provided in paragraph (h) of this section.

* * * * *

(j) *Waiting for lockage.* Vessels waiting for lockage shall wait in the clear outside of the lock approach channel, or contingent upon permission by the Lock Master, may at their own risk, lie inside the approach channel at a place specified by the Lock Master. At Bonneville, vessels may at their own risk, lay-to at the downstream moorage facility on the north shore downstream from the north guide wall provided a 100-foot-wide open channel is maintained.

* * * * *

(w) * * *

(7) *At Little Goose Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 60°37′ true for a distance of 676 yards; thence 345°26′ true for a distance of 494 yards; thence 262°37′47″ true to the dam embankment shoreline. The downstream limits commence 512 yards downstream and at right angles to the axis of the dam on the south shore; thence parallel to the axis of the dam to the north shore. Signs designate the restricted areas.

* * * * *

[FR Doc. 05–21171 Filed 10–21–05; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0004; A–1–FRL–7982–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Consumer Products Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from consumer products. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 23, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0004 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the

on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–ME–0004,'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617)918–1047, *arnold.anne@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: September 28, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–21193 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–CT–0002; A–1–FRL–7967–1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC RACT Orders for Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc.; and Ross & Roberts, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions incorporate volatile organic compound (VOC) reasonably available control technology (RACT) state consent orders for Hitchcock Chair Co., Ltd.; Kimberly Clark Corp.; Watson Laboratories, Inc.; and Ross & Roberts, Inc. into the Connecticut SIP. This action will have a beneficial effect on air quality by reducing VOC emissions which contribute to ground-level ozone formation. EPA is taking this action in accordance with the Clean Air Act.

DATES: Written comments must be received on or before November 23, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0002 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/*, Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov*.

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–CT–0002,'' David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax (617) 918–0684, e-mail: *simcox.alison@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the

remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 11, 2005.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 05–21195 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0197; FRL –7987–5]

RIN 2060–AK09

Ethylene Oxide Emissions Standards for Sterilization Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision; request for public comment.

SUMMARY: On December 6, 1994, we promulgated Ethylene Oxide Emission Standards for Sterilization Facilities (59 FR 62585). The national emission standards limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to assess the risk remaining (residual risk) after the application of national emission standards controls and revise as necessary to protect public health. Also, CAA section 112(d)(6) requires us to review and to revise the national emission standards as necessary by taking into account developments in practices, processes, and control technologies. The proposal announces a decision and requests public comments on the residual risk assessment and technology review for the national emission standards. We are proposing no further action at this time to revise the national emission standards.

DATES: *Comments.* Comments must be received on or before December 8, 2005. *Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by November 8, 2005, a public hearing will be held approximately 20 days following publication of this notice in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0197 (Legacy Docket A–88–03), by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0197 (Legacy Docket A–88–03). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at the EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. David Markwordt, Policy Planning and Standards Group, Emission Standards Division, U.S. EPA (C439–04), Research Triangle Park, NC 27711, telephone (919) 541–0837.

FOR FURTHER INFORMATION CONTACT: For additional information on this proposed decision, review the reports listed in the **SUPPLEMENTARY INFORMATION** section.

General and technical information. Mr. David Markwordt, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Policy Planning and Standards Group (C439–04), Research Triangle Park, North Carolina 27711, telephone (919) 541–0837, facsimile number (919) 541–0942, electronic mail (e-mail) address: *markwordt.david@epa.gov*.

Residual risk assessment information. Mr. Mark Morris, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Risk and Exposure Assessment Group (C404–01), Research Triangle Park, North Carolina 27711, telephone (919) 541–5416, facsimile number (919) 541–0840, electronic mail (e-mail) address: *morris.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the national emission standards include:

Category	NAICS*	Examples of regulated entities
Industry	3841, 3842	Medical suppliers.
	2834, 5122, 2831, 2833	Pharmaceuticals.
	2099, 5149, 2034, 2035, 2046	Spice manufacturers.
	7399, 7218, 8091	Contract sterilizers.

* North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.360. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed decision will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed decision will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

Reports for Public Comment. We have prepared two summary memoranda covering the rationale for the proposed decision and the residual risk analyses. These memoranda are entitled: ''Technology Review and Residual Risk Development for the Ethylene Oxide Commercial Sterilization NESHAP,'' and ''Residual Risk Assessment for the Ethylene Oxide Commercial Sterilization Source Category.'' Both reports are in the Docket No. OAR–2003–0197 (Legacy Docket A–88–03). See the preceding Docket section for docket information and availability.

Outline

The information presented in this preamble is organized as follows:

I. Background

A. What is the statutory authority for these actions?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as ''major sources''), as well as for certain ''area sources'' emitting less than those amounts. These technology-based national emission standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

For area sources, CAA section 112(d)(5) provides that in lieu of MACT, the Administrator may elect to promulgate standards or requirements which provide for the use of generally available control technologies or management practices and such standards are commonly referred to as generally available control technology (GACT) standards.

On December 6, 1994 (59 FR 62585), we promulgated national emission standards for Ethylene Oxide Commercial Sterilization and Fumigation Operations. In that final rule, we set MACT for major sources under section 112(d)(2). As for area sources, we established MACT standards for certain emission points pursuant to section 112(d)(2) and GACT standards for other emission points pursuant to section 112(d)(5).

Section 112(d)(6) provides that EPA review these technology-based standards and revise them ''as necessary (taking into account developments in practices, processes and control technologies)'' no less frequently than every 8 years.

The second stage in standard setting is described in section 112(f) of the CAA. This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted the ''Residual Risk Report to Congress,'' EPA–453/R–99–001, in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) requires us to determine for each section 112(d) source category whether the national emission standards protect public health with an ample margin of safety. If the national emission standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety. EPA must also

adopt more stringent standards to prevent an adverse environmental effect (defined in section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), but must consider cost, energy, safety, and other relevant factors in doing so.

Section 112(f)(5) expressly provides, however, that EPA is not required to conduct any review under section 112(f) or promulgate any emissions limitations under that subsection for any area source listed pursuant to section 112(c)(3) for which EPA has issued GACT standards. Thus, although EPA has discretion to conduct a residual risk review under section 112(f) for area sources for which it has established GACT, it is not required to do so. See CAA section 112(f)(5).

B. What is our approach for developing residual risk standards?

Following our initial determination that the individual most exposed for the emissions category considered exceeds a 1-in-1 million lifetime excess cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable risk and ample margin of safety. The first step, consideration of acceptable risk, is only a starting point for the analysis that determines the final standards. The second step determines the ample margin of safety which corresponds to the levels at which the standards are set.

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) refers positively to the interpretation of these terms in our 1989 rulemaking (54 FR 38044, September 14, 1989), ''National Emission Standards for Hazardous Air Pollutants (NESHAP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants,'' (Benzene NESHAP). We read CAA section 112(f)(2)(B) as essentially directing us to use the interpretation set out in that notice [1] or to utilize approaches affording at least the same level of protection.[2] We likewise notified Congress in its Residual Risk Report that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations.[3]

In the Benzene NESHAP (54 FR 38044–45, September 14, 1989), we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by: (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million; and (2) limiting to no higher than approximately 1 in 10 thousand [*i.e.*, 100 in a million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

As explained more fully in our Residual Risk Report to Congress, these goals are not ''rigid line[s] for acceptability,'' but rather broad objectives to be weighed ''with a series of other health measures and factors.'' [4]

C. What are the current standards?

The Ethylene Oxide Emission Standards for Sterilization Facilities were promulgated on December 6, 1994 (59 FR 62585) and cover ethylene oxide, the only HAP emitted from the sterilization/fumigation process. The national emission standards regulate both major and area sources; the emission points regulated are the main sterilization and aeration room vents. The standards for major sources require that sources reduce main sterilization and aeration room vent emissions by 99 percent. The standards for area sources require that sources reduce main sterilization vent emissions by 99 percent.

During the development of the national emission standards, we estimated that there were approximately 188 facilities nationwide, of which 47 were major sources. Usually, these operations are not located at facilities with other types of HAP-emitting sources. The majority of sterilization facilities process on a contract basis, but some medical supply and spice manufacturers sterilize their own products. We estimated that the national emission standards would reduce emissions of ethylene oxide by 1,000 tons annually.

D. What are the results of the residual risk assessment?

Pursuant to CAA section 112(f)(2), we prepared a risk assessment to determine the residual risk posed by ethylene oxide sterilization facilities after implementation of the ethylene oxide national emission standards. The number of facilities in the source category has decreased since the development of the national emission standards for various reasons, including industry consolidation. We developed a list of 76 facilities that currently comprises both the major and area source categories, based on information primarily from the following three sources: (1) The 1999 National Emissions Inventory (NEI), (2) the 2000 Toxics Release Inventory (TRI), and (3) the Ethylene Oxide Sterilization Association (EOSA). We used these data sources for emissions and emission point release parameters in dispersion modeling.

As stated previously, consistent with section 112(f)(2), EPA must determine for each section 112(d) source category whether the MACT standards protect public health with an ample margin of safety. Because MACT and GACT are both required of some area sources, risk attributed to GACT emission points are included in the overall modeled risks for MACT. Therefore, the risks presented below are higher than just those risks attributed solely to emission points for which we established MACT in 1994.

Using the above-noted information, we modeled ambient concentrations near these facilities and calculated the risk of possible chronic cancer and noncancer health effects and evaluated whether acute exposures might exceed relevant health thresholds. We found that individual lifetime cancer risks exceeded 1-in-1 million in areas near 44 of the 76 modeled sources, and approximately 250,000 people live in these areas. Individual lifetime cancer risks exceeded 10-in-1 million in areas near 19 sources, and approximately 7,300 people live in these areas. The highest calculated individual lifetime cancer risk was 90-in-1 million at one facility.

An EPA assessment for ethylene oxide is currently under way. The EPA has not yet completed a full evaluation of the data on which it will determine an EPA cancer unit risk estimate for ethylene oxide. The EPA is also developing an acute reference exposure value for ethylene oxide. The schedule for both of these actions can be found at: *http://cfpub.epa.gov/iristrac.*

[1] This reading is confirmed by the Legislative History to CAA section 112(f); see, *e.g.*, ''A Legislative History of the Clean Air Act Amendments of 1990,'' vol. 1, page 877 (Senate Debate on Conference Report).

[2] Legislative History, vol. 1, p. 877, stating, ''* * * the managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the Administrator's benzene regulations * * *.''

[3] ''Residual Risk Report to Congress,'' March 1999, EPA–453/R–99–001, page ES–11.

[4] *Id.*

Under section 112(o)(7) of the CAA, we are required to issue revised cancer guidelines prior to the promulgation of the first residual risk rule under section 112(f) (an implication being that we should consider these revisions in the various residual risk rules). We have issued revised cancer guidelines and also supplemental guidance which deal specifically with assessing the potential added susceptibility from early-life exposure to carcinogens. The supplemental guidance provides an approach for adjusting risk estimates to incorporate the potential for increased risk due to early-life exposures to chemicals that are thought to be carcinogenic by a mutagenic mode of action. We are currently evaluating the available scientific information associated with ethylene oxide to see if ''age dependent adjustment factors'' should be applied when assessing cancer risk for early-life exposures which cause cancer through a mutagenic mode. If the scientific information indicates that it is appropriate to apply age dependent adjustment factors, then we will reassess the risks from exposure to ethylene oxide prior to the promulgation of the final rule.

Estimated annual cancer incidence rates were also calculated from predicted individual cancer risks for the people reported to reside in the U.S. census blocks within the modeled area around each facility (*i.e.*, within 50 kilometers). For the 44 facilities for which estimated maximum individual cancer risk is greater than 1-in-1 million, the summed estimated annual cancer incidence is 0.01 cases per year. Across all 76 modeled facilities, the total estimated annual incidence is 0.04 cases per year. We estimated that values presented here are incremental rates based on modeled concentrations and 2000 U.S. census data, and they should not be interpreted as actual cancer incidence rates derived from observations of disease occurrence over time (such as cancer incidence rates that may be reported based on epidemiological studies).

The highest chronic noncancer hazard index was 0.03. This means that the highest lifetime exposures to ethylene oxide were only 3 percent of the chronic noncancer reference concentration (RfC). Finally, we found that acute exposures, which were calculated by assuming the maximum hourly emissions rate and worst-case meteorological conditions, did not exceed any of the relevant health thresholds for acute effects for ethylene oxide.

We also consider an adverse environmental effect as a part of a residual risk assessment. Regarding the inhalation exposure pathway for terrestrial mammals, we conclude that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. Because the maximum cancer and noncancer hazards to humans from inhalation exposure are relatively low, we expect no significant and widespread adverse effects to terrestrial mammals from inhalation exposure to ethylene oxide from commercial sterilization facilities.

Some HAP which are persistent and bioaccumulative can also pose risks via pathways other than inhalation (*e.g.*, by depositing to the ground and entering the food chain). The EPA has developed a list of persistent, bioaccumulative, and toxic (PBT) HAP based on information from the Pollution Prevention program, the Great Waters program, the TRI, and additional analysis conducted by the Office of Air Quality Planning and Standards. Ethylene oxide is not on the list of PBT. Consequently, we conclude the noninhalation risks to be minimal, and we conclude that a quantitative risk assessment for multipathway exposures is unnecessary.

The details of this analysis can be found in our ''Memorandum: Data and Assumptions Used for the Screening-level Residual Risk Analysis of the Commercial Ethylene Oxide Sterilizers and Fumigators Source Category'' and the supporting ''Memorandum: Residual Risk Assessment for Ethylene Oxide Commercial Sterilization Source Category.'' See ''Reports for Public Comment'' in the **SUPPLEMENTARY INFORMATION** section above for information on obtaining these reports.

E. What are our conclusions regarding the need for more stringent standards under section 112(f)(2)?

In the first step of the decision-making process under section 112(f)(2), the determination of acceptability, we note that the maximum individual excess lifetime cancer risk associated with any facility with MACT is less than what we would normally consider as the upper limit of acceptable risk (*i.e.*, less than 100-in-1 million).[5] Therefore, we are satisfied that these sources represent acceptable risk without the need for further more stringent controls.

In the second step of the ample margin of safety framework under section 112(f)(2), we consider setting standards at a level which may be equal to, or lower than, the acceptable risk level and which protects public health with an ample margin of safety. In making the determination, we considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors.

Because our conservative risk estimates suggest facilities in the category continue to pose risks exceeding 1-in-1 million after the application of MACT, we considered additional controls, such as new technology or alternative controls, to reduce emissions and associated risks. In 2001, while investigating the safety issue associated with chamber exhaust vents, we did not find any new technology or alternative controls for any of the vents—chamber, sterilizer or aeration room vents. We also found no data to support the addition of down stream control devices to existing control means as a way of further reducing emissions. This discussion can be found in our ''Memorandum: Technology Review and Residual Risk Data Development for the Ethylene Oxide Commercial Sterilization NESHAP.'' We concluded that further controls would not meaningfully reduce emissions from emission vents controlled with MACT at both major and area sources.

While no additional control measures for emission vents controlled with MACT have been identified that would result in a meaningful reduction of emissions, we are aware of existing State rules which have control limits exceeding the 99 percent MACT requirement. The State of California's emissions reductions requirement for the main sterilizer vent is 99.9 percent; this requirement was enacted prior to promulgation of the Federal requirements.

We do not have data to confirm that all facilities are capable of achieving 99.9 percent on a continuous basis. In 1994, in support of the Federal control limit, we concluded both rules are sufficiently stringent to require application of the same technologies. We concluded it reasonable to assume the same technologies perform similarly, *i.e.*, those facilities outside of California are on average likely to achieve emissions reductions similar to

[5] Although we conducted a risk assessment which included emissions from those vents for which we set GACT in 1994, we are exercising our discretion under section 112(f)(5) not to undertake the section 112(f)(2) analysis for those GACT emission points.

See CAA sections 112(f)(2)(A), (B) and (f)(5). The discussion in this section of the preamble, therefore, is limited to those emission points for which we established MACT in 1994.

those in California. We concluded that tightening the current standards would not meaningfully reduce risks.

The EPA requests comments specifically addressing our conclusion that the tightening of the current standards would not meaningfully reduce emissions or risks. Both EPA's and California's rules require a test to demonstrate compliance with the emissions reductions limit and continuous monitoring of the control equipment to ensure proper operation and maintenance. Initial compliance tests are performed one time and on a very narrow set of operating conditions. The test results are too limited to determine if there are any meaningful differences in control technology lifetime performance associated with a 99 percent and 99.9 percent performance limit. Specifically, there are several questions on which we are requesting public comment:

- Are there available test data demonstrating achievability of 99.9 percent emissions reductions on a continuous basis for the main sterilizer vent?
- Are there available test data demonstrating a meaningful difference in lifetime control performance between the same technology when it is subject to either the 99 or 99.9 percent emissions reductions requirement?
- Are there available test data demonstrating all similar existing control technology is capable of achieving 99.9 percent emissions reductions on a continuous basis?
- Are there available data showing the variance in long-term performance for similar technology complying with the 99 or 99.9 percent emissions reductions limit?
- Are there additional costs associated with increasing the percent reduction from 99 to 99.9 percent?

We also considered prohibiting the use of ethylene oxide for new facilities, which would necessitate the use of an alternative sterilization process. The Food and Drug Administration (FDA) has primary authority to regulate the use of sterilization methods. The FDA issued guidance (510(k) Sterility Review Guidance K90–1, August 30, 2002 (''FDA Guidance'')) to facilitate nontraditional sterilization methods. The FDA stated in the guidance that the FDA ''has had little or no experience with these methods for achieving sterilization and is concerned about a manufacturer's ability to successfully use such methods without adversely affecting the sterility assurance level * * *.'' If the use of ethylene oxide were prohibited, manufacturers of products requiring sterilization would have to reconsider the device and packaging material, its compatibility with the nontraditional sterilizing agent, the packaging configuration, the ability of the nontraditional sterilant to penetrate the packaging, the cost, and availability. Because these nontraditional sterilization methods are less known, manufacturers would have to submit to FDA their validation data for review. Nontraditional sterilization operations cannot be used to sterilize materials until they have been validated. Prohibiting the use of ethylene oxide carries the risk of creating a void where some products may not be able to be sterilized until newer systems are designed and validated. Until such time as these nontraditional sterilization techniques may be used under FDA rules, these techniques are not considered available for the purpose of reducing emissions.

Radiation (gamma and electron beam) can be used to sterilize many products. Radiation sterilization has been used for about half of the products sterilized in the U.S. However, these sterilization techniques are limited in their applications. For example, gamma radiation has potentially damaging effects on products, particularly those products that contain polymers. And, radiation technology is completely different from chamber sterilization. Ethylene oxide and radiation technologies (both gamma and e-beam) share no common equipment. Any conversion would involve scrapping the ethylene oxide chambers and the related specialized equipment and systems, and likely displacing the existing workforce. Additionally, the ethylene oxide sterilization facility would not meet requirements for a radiation facility. To construct a radiation facility, special shielding (huge concrete/lead shields) and storage pools need to be incorporated into the design of both the building and the process.

As stated previously, further controls for emission vents controlled with MACT at both major and area sources do not meaningfully reduce emissions or the corresponding risks. Further, the review has shown that both the noncancer and acute risks from this source category are below their relevant health thresholds. As a result, we conclude that no additional control should be required because an ample margin of safety (considering cost, technical feasibility, and other factors) has been achieved by the national emission standards.

Thus, we conclude that the level of risk resulting from the limits in the national emission standards is acceptable for these source categories, and that changes to the national emission standards are not required to satisfy section 112(f) of the CAA.

As discussed above, the EPA is developing a cancer unit risk estimate for ethylene oxide. If the EPA value becomes available before the promulgation of the final rule, we will reevaluate whether the risks are acceptable and whether an ample margin of safety has been achieved.

F. How are we addressing GACT at area sources for purposes of section 112(f)?

As noted above, section 112(f)(5) provides that EPA may, but is not required to, conduct any review under section 112(f) or promulgate any emissions limitations under that subsection for any area source for which an emissions standard is promugated as GACT. The CAA clearly permits EPA to review area source emissions under section 112(f)(2), even when the agency issued GACT standards under section 112(d)(5) during its initial review. What is less clear is what the approach should be when the agency has ''mixed'' its emission standards (*i.e.*, issued both MACT and GACT standards) for an area source category. In this instance, for example, EPA has issued MACT standards, under section 112(d)(1), for sterilizer vents and chamber exhaust vents; and GACT standards, under section 112(d)(5), for aeration room vents. This leaves open the question of which emissions points should be reviewed under a subsequent section 112(f)(2) review. In this instance, EPA has undertaken an analysis under section 112(f)(2) for the area emissions standards that were issued as MACT standards, but the Agency has exercised its discretion and chosen not to perform an section 112(f)(2) analysis for those emissions points for which we established GACT. The Agency may have other alternatives legally available, however. For example, because the Administrator is not required to perform a residual risk analysis for any area source category when the Agency has previously promulgated ''*an* emissions standard'' pursuant to section 112(d)(5), it is at least arguable that, by using the singular article ''an,'' Congress intended to permit the Agency discretion to decline to review the area source category, in its entirety, under section 112(f)(2) in appropriate ''mixed'' cases. The Agency seeks comment on the Agency's range of discretion under section 112(f)(5) and suggestions on what factors should guide decisions about its approach in future rulemakings.

G. What are the results of the technology review?

Section 112(d)(6) of the CAA requires us to review and revise as necessary (taking into account developments in practices, processes, and control technologies) emission standards promulgated under this section no less often than every 8 years. In the course of our review, we investigated emission control levels and the potential for additional emissions reductions from existing affected facilities within the ethylene oxide commercial sterilization source category. Because the three vents associated with these facilities (*i.e.*, the main sterilization, aeration room, and chamber exhaust emission vents) are the same for both major and area sources, the conclusions concerning technology apply to both source categories. We found that additional controls for emission vents controlled with either MACT or GACT would achieve at best, minimal emission and risk reductions at a very high cost. In our review, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the national emission standards in 1994.

For new major sources where MACT requires emissions reductions of 99 percent, we considered increasing the emissions reductions limit to 99.9 percent in the national emission standards. A new limit would only apply to affected new sources (a new facility for the standards), while existing sources would still be subject to the current limits. As stated previously, we do not have data to confirm that facilities are capable of achieving 99.9 percent on a continuous basis. Therefore, the 99 percent emissions reductions requirement of the national emission standards is considered to be the best control level in practice nationally. We conclude that the new source standard for the emissions reductions limit should be kept the same as that for existing, and that no further revisions to the National Emission Standards for Ethylene Oxide Sterilization Facilities are needed.

In the original generally GACT determination for new area sources, no control requirements were established due to the high cost (59 FR 10598–99). In our review, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the national emission standards in 1994 which would reduce the costs of applying controls to new area sources.

Because the national emission standards continue to represent the best controls that can be implemented nationally, we are proposing not to revise the National Emission Standards for Ethylene Oxide Sterilization Facilities under CAA section 112(f) or 112(d)(6).

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that today's proposed decision is a ''significant regulatory action'' under the terms of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, today's proposed decision was submitted to OMB for review. However, today's proposed decision will result in no additional cost impacts beyond those estimated for the current national emission standards. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. *et seq.* Today's proposed decision will not change the burden estimates from those developed and approved for the national emission standards. In 1994, OMB approved the information collection requirements for the national emission standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2060–0283.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA has established a public docket for this action, which includes the ICR, under Docket ID number OAR 2003–0197, which can be found in *http://www.epa.gov/edocket.* Today's proposed decision will not change the burden estimates from those developed and approved in 1994 for the national emission standards.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed decision on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121).

After considering the economic impacts of today's proposed decision on small entities, I certify that the decision will not have a significant economic impact on a substantial number of small entities. The proposed decision will not impose any requirements on small entities. Today's proposal announces a decision and requests public comments on the residual risk assessment and technology review for the national emission standards and imposes no additional burden on facilities impacted by the national emission standards. We are proposing no further action at this time to revise the national emission standards. We continue to be interested in the potential impacts of the proposed decision on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's proposed decision does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, today's proposed decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's proposed decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed decision is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's proposed decision does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of the Executive Order do not apply to today's proposed decision.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's proposed decision.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's proposed decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's proposed decision is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's proposed decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (NTTAA), Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

Today's proposed decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 18, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–21187 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0004, FRL–7987–4]

RIN 2060–AK16

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; request for public comment.

SUMMARY: On September 8, 1994, we promulgated national emission standards for hazardous air pollutants (NESHAP) from industrial process cooling towers (59 FR 46350). The NESHAP eliminated the use of chromium-based water treatment chemicals that are known or suspected to cause cancer or have a serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to assess the risk remaining (residual risk) after the application of the NESHAP and promulgate additional standards if warranted to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. Also, section 112(d)(6) of the CAA requires EPA to review and revise the NESHAP as necessary at least every 8 years, taking into account developments in practices, processes, and control technologies. Based on our findings from the residual risk review and technology review, we are proposing no further action at this time to revise the NESHAP. This proposed action requests public comments on the residual risk review and technology review for the NESHAP.

DATES: *Comments.* Comments must be received on or before December 8, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 8, 2005, a public hearing will be held approximately 20 days following publication of this action in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0004, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov* and *mulrine.phil@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–5450.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket Number OAR–2004–0004, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID Number OAR–2004–0004, 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that a separate copy of each public comment also be sent to the contact person for the proposed action listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2004–0004. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102.)

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, Docket ID Number OAR–2004–0004, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed action, contact Mr. Phil Mulrine, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group (C439–02), Research Triangle Park, North Carolina

27711, telephone (919) 541–5289, fax number (919) 541–5450, e-mail address: *mulrine.phil@epa.gov.* For questions on the residual risk analysis, contact Mr. Scott Jenkins, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Risk and Exposure Assessment Group (C404–01), Research Triangle Park, North Carolina 27711, telephone (919) 541–1167, fax number (919) 541–0840, e-mail address: *jenkins.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the NESHAP include:

Category	NAICS code [a]	SIC code [b]	Examples of regulated entities
Industry	324110	(2911)	Industrial process cooling towers located at major sources, including petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, tobacco products manufacturing plants, rubber products manufacturing plants, and textile finishing plants.
	325181	(2812)	
	325120	(2813)	
	325131	(2816)	
	325188	(2819)	
	325191	(2861)	
	325311	(2873)	
	325312	(2874)	
	325314	(2875)	
	325320	(2879)	
	325520	(2891)	
	325920	(2892)	
	325910	(2893)	
	325182	(2895)	
	325998	(2899)	
	331111	(3312)	
	331411	(3331)	
	331419	(3339)	
	327211	(3211)	
	327213	(3221)	
	327212	(3229)	
	312221	(2111)	
	312229	(2121)	
	312229	(2131)	
	326211	(3011)	
	313311	(2261)	
	313311	(2262)	
	313312	(2269)	
Federal/State/local/tribal governments.			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the NESHAP. To determine whether your facility would be affected by the NESHAP, you should examine the applicability criteria in 40 CFR part 63.400(a) of subpart Q (NESHAP for Industrial Process Cooling Towers). If you have any questions regarding the applicability of the NESHAP to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR part 63.13 of subpart A (General Provisions). *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposed action will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Barbara Miles, Risk and Exposure Group, Emission Standards Division, U.S. EPA (C404–01), Research Triangle Park, NC 27711, telephone (919) 541–5648. *Outline.* The information presented in this preamble is organized as follows:

I. Background

A. What Is the Statutory Authority for This Action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for us to promulgate

national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as ''major sources''), as well as for certain ''area sources'' emitting less than those amounts. These technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. For area sources, CAA section 112(d)(5) provides that in lieu of MACT, the Administrator may elect to promulgate standards or requirements which provide for the use of generally available control technologies or management practices and such standards are commonly referred to as generally available control technology (GACT) standards. EPA is then required to review these technology-based standards and to revise them ''as necessary, taking into account developments in practices, processes and control technologies,'' no less frequently than every 8 years.

The second stage in standard-setting is described in section 112(f) of the CAA. This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (''Residual Risk Report to Congress,'' EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) requires us to determine for each section 112(d) source category whether the MACT standards protect public health with an ample margin of safety. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety. EPA must also adopt more stringent standards to prevent an adverse environmental effect (defined in section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What Did the Industrial Process Cooling Tower NESHAP Accomplish?

On September 8, 1994, we promulgated the NESHAP for industrial process cooling towers (IPCT) (59 FR 46350) and required existing sources to comply with the NESHAP by March 8, 1996.

Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with heating, ventilation, and air conditioning (HVAC) systems. The IPCT NESHAP applies specifically to IPCT that use chromium-based water treatment chemicals and are located at major sources of HAP emissions. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (comfort cooling towers) were promulgated under section 6 of the Toxic Substances Control Act (TSCA)(55 FR 222 January 3, 1990).

The primary industries that use IPCT include petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, rubber products manufacturing plants, tobacco products manufacturing plants, and textile manufacturing plants. When the IPCT NESHAP were promulgated, we estimated that there were approximately 6,945 IPCT located at these plants nationwide and that approximately 260 of these IPCT used chromium-based water treatment chemicals. We estimated that the IPCT NESHAP would reduce emissions of chromium compounds from these facilities by 22.7 megagrams per year (Mg/yr) (25 tons per year (tpy)) by prohibiting the use of chromium-based water treatment chemicals in IPCT. In addition, we estimated that the NESHAP would prevent emissions of 1.6 Mg/yr (1.8 tpy) of chromium compounds from the 870 new IPCT projected by the 5th year of the standards (1998).

When the NESHAP were promulgated, we had no information that indicated that HAP other than chromium compounds were emitted from IPCT. Consequently, we did not address emissions of other HAP in the IPCT NESHAP.

C. What Are the Conclusions of the Residual Risk Review? Source Category Characterization

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by IPCT after implementation of the NESHAP. To evaluate the residual risk for the IPCT source category, we identified the HAP emitted from IPCT and, as a discretionary matter in this instance, estimated worst-case emission rates for each of those HAP. These worst-case emission rates were used, along with facility parameters representing an actual facility, to perform the risk assessment.

Emissions Data

Because the IPCT NESHAP prohibits the use of chromium-based water treatment chemicals in IPCT, we believe that chromium compound emissions from IPCT have been eliminated by the NESHAP. In assessing the residual risk for the source category, however, we have also considered emissions of other HAP from IPCT.

In the absence of process leaks or malfunctions, the chemical species that are emitted from IPCT consist of the naturally-occurring constituents of the cooling water and any substances that are added to the cooling water. To determine what other HAP may be emitted from IPCT, we first contacted suppliers of cooling water treatment chemicals for information on cooling water additives that either contain HAP or form HAP, which could be emitted from IPCT. Then, we conducted a literature search for information on emissions from cooling towers.

The majority of IPCT are designed to recirculate the cooling water through the system to minimize the costs associated with wastewater disposal and permitting. As the water is recirculated, cooling water is lost through evaporation and emissions, which is referred to as drift. Because of these losses, the concentrations of the dissolved and suspended chemical constituents of the cooling water steadily increase, and water treatment chemicals must be added to the cooling water to ensure continued operation of the system. These chemicals generally serve to inhibit corrosion, control scaling and fouling, limit the growth of microorganisms, and control the pH of the cooling water.

To determine which of these water treatment chemicals may contain or

form HAP and subsequently be emitted from IPCT, we contacted seven companies that supply chemicals for industrial cooling water system treatment. These companies include the largest suppliers of cooling water treatment chemicals; combined, the seven companies account for the major share of the cooling water treatment chemical market.

We also conducted a literature search of trade journals, conference proceedings, EPA publications, and other documents for information on emissions from IPCT. The results of the search were placed in the public docket for this proposed action. The information collected from the water treatment chemical suppliers and through the literature search indicated that some biocides used to treat industrial cooling water either contain HAP or form HAP that can be emitted from IPCT. These HAP include chlorine, chloroform, methanol, and ethylene thiourea. However, chlorine emissions occur only under acidic conditions (i.e., pH of 3.0 or less). Because IPCT water treatment programs all operate under alkaline conditions, with the pH of the cooling water maintained in the range of 7.5 to 9.0, chlorine emissions from IPCT are unlikely under normal operating conditions.

Industrial process cooling towers typically use one and not all of the three listed HAP at any given time. Therefore, IPCT emit no more than one of the three listed HAP. We estimated worst-case emission rates for chloroform, methanol, and ethylene thiourea based on the range of concentrations of these constituents in cooling water and the model plants developed for the IPCT NESHAP.[1] We used these emission rates to model exposure concentrations surrounding those sources, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multi-pathway and ecological risks.

Results

Consistent with the tiered modeling approach described in the Residual Risk Report to Congress, the risk assessment for this source category started with a simple assessment which used conservative assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multi-pathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary. The assessment is described in detail in the memorandum ''Residual Risk Assessment for the Industrial Process Cooling Source Category'' available in the docket. Brief summaries of the results follow.

Cancer. Both ethylene thiourea and chloroform are classified as probable human carcinogens by EPA. The estimated maximum lifetime (i.e., 70-year) individual cancer risk due to the combined emissions of these two HAP from industrial process cooling towers was 4×10^{-7}, or 0.4-in-a-million. This is less than the statutory trigger of 1-in-a-million in section 112(f)(2) of the CAA.

Chronic Noncancer. Chronic inhalation exposure to chloroform, ethylene thiourea, and methanol have been associated with a variety of noncancer health effects including depression of the central nervous system, hepatitis, jaundice, thyroid effects, birth defects, blurred vision, headache, dizziness, and nausea. Our risk assessment demonstrated that exposure to these HAP due to emissions from IPCT is unlikely to cause adverse chronic noncancer health effects. The maximum calculated hazard index (HI) is 0.002, even when emissions of all three HAP are assumed to come from the same cooling towers, which is an unlikely event. This HI is well below a HI of 1, which is the minimum level of potential concern.

Acute. Acute inhalation exposure to chloroform and/or methanol has been associated with a variety of adverse health effects including blurred vision, headache, dizziness, nausea, and depression of the central nervous system. Our risk assessment demonstrated that acute exposure to these HAP due to worst-case emissions from IPCT is unlikely to cause adverse health effects. The maximum acute hazard quotient (HQ) for any of the HAP evaluated with any of the relevant acute dose-response values considered is 0.07. This is well below a HQ of 1, which is the minimum level of potential concern.

Human Health Multipathway and Ecological. None of the HAP considered in this risk assessment are believed to persist in the environment or to bioaccumulate. Therefore, risks to human health, resulting from multipathway exposure to HAP emitted by IPCT, are not believed to be significant.

We are also required to consider adverse environmental effect as a part of a residual risk assessment. As we stated previously, none of the chemicals considered in this risk assessment are believed to persist in the environment or to bioaccumulate. Therefore, we have no evidence that suggests adverse environmental effect indicating a need for further controls. Regarding the inhalation exposure pathway for terrestrial mammals, we have concluded that the human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. The maximum cancer and noncancer hazards to humans from inhalation exposure are very low, and we expect there to be no significant and widespread adverse effect to terrestrial mammals from inhalation exposure to HAP emitted from facilities in this source category. Therefore, an adverse environmental effect is not a concern for emissions from cooling towers. Since our analysis shows no significant ecological effect, we also do not believe that there is any potential for an effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, EPA has concluded that a consultation with the Fish and Wildlife Service is not necessary.

Assessment

Since our assessment shows that the IPCT NESHAP poses maximum lifetime excess cancer significantly less than one in a million, and since noncancer health risks and ecological risks were found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA.

EPA recognizes that there may be circumstances where it would be appropriate to delist a source category or subcategory after MACT standards have been promulgated. For example, an industry may have changed sufficiently in the years since the category was listed and the MACT standards promulgated, such that even in the absence of the MACT standards, emissions from the category would be sufficiently low to meet the delisting criteria of CAA section 112(c)(9). In the case of IPCT, EPA promulgated MACT standards prohibiting the use of chromium-based water treatment chemicals. Currently, none of the sources in this category are using chromium-based water treatment chemicals. EPA's analysis suggests that the risks associated with other HAP are well below levels of concern. As a result, changes with this category, i.e., the use of nonchromium-based water treatment chemicals, may allow EPA to determine that the section 112(c)(9) criteria have been met in the absence of

[1] We ask for comment on what approach might be appropriate when no pre-existing NESHAP level of emissions exists.

the MACT standards. In the present case, we have not developed data to support this conclusion. We request comment on EPA's ability to delist a category or subcategory under section 112(c)(9) after promulgation of section 112(d) MACT standards. We also request comment (and supporting data) on whether this industry has changed such that it would be appropriate for EPA to delist the source category or a distinct subcategory. We also solicit comment on the possibility of subcategorizing source categories for purposes of satisfying section 112(f)(2).

D. What Are the Conclusions of the Technology Review?

Section 112(d)(6) of the CAA requires that the Administrator review and revise ''the emission standards promulgated under this section'' as necessary. In this instance, the emission standards imposed an absolute prohibition on the use of chromium-based water treatment chemicals in IPCT. As the emission standards imposed for this particular source are already at the most stringent, no more stringent standards could be imposed. Nor has EPA received any evidence which would justify a downward revision of the standards. In the residual risk analysis discussed above, EPA has considered risks for HAP emissions that are not currently subject to an emission standards but are attributable to the source category or subcategory. The text of section 112(d)(6) suggests that the technology review is not so extensive. EPA has tentatively concluded that the section 112(d)(6) review should be limited to the ''emission standards'' already issued under section 112(d). As the MACT emission standards for IPCT are the most stringent possible, the Agency has concluded that no further controls are necessary.[2]

In light of today's low-risk finding under CAA section 112(f) (i.e., that, given compliance with the existing MACT standards every source in the category poses excess lifetime individual cancer risks less than 1-in-a-million and no significant noncancer or ecological risks), the Agency seeks comment on the notion that, barring any unforeseeable circumstances which might substantially change this source category or its emissions, we would have no obligations to conduct future technology reviews under CAA section 112(d)(6).

[2] We reviewed available information and talked with industry representatives to investigate available emission control technologies and the potential for additional emission reductions for any nonchromium HAP emitted from IPCT. Our investigation did not identify any significant developments in practices, processes, or control technologies.

II. Proposed Action

We believe that no further revisions to the standards are needed and are proposing not to revise the standards under section 112(d)(6) or 112(f)(2) of the CAA.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any information collection burden. It will not change the burden estimates from those previously developed and approved for the existing NESHAP. OMB has previously approved the information collection requirements contained in the existing regulation (59 FR 46350, September 8, 1994) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* However, this information collection request has been discontinued because the information requested in the original regulation is no longer needed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 to 1,000 employees, depending on the size definition for the affected NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed action will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed action

on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Thus, today's proposed action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed action contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's proposed action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The proposed action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a significant disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's proposed decision is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's proposed decision is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The proposed action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed action and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in the proposed action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 18, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–21188 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0161, FRL–7987–6]

RIN 2060–AK23

National Emission Standards for Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; request for public comment.

SUMMARY: On December 15, 1994, we promulgated national emission standards for hazardous air pollutants (HAP) from magnetic tape manufacturing operations (59 FR 64580). The national emission standards limit and control HAP that are known or suspected to cause cancer or have other serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to assess the risk remaining (residual risk) after the application of national emission standards controls and to promulgate more stringent standards, if necessary, to protect public health with an ample margin of safety and to prevent adverse environmental effect. Also, section 112(d)(6) of the CAA requires EPA to review and revise the national emission standards, as necessary, taking into account developments in practices, processes, and control technologies. Based on our findings from the residual risk and technology review, we are proposing no further action at this time to revise the national emission standards. Today's proposed action requests public comments on the residual risk and technology review for the national emission standards.

DATES: *Comments.* Comments must be received on or before December 8, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 14, 2005, a public hearing will be held approximately 30 days following publication of this notice in the **Federal Register.**

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0161, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edkpub/index.jsp.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov and dail.lynn@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–5689.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket Number OAR–2003–0161, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID Number OAR–2003–0161, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person for the proposed action listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0161. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edkpub/index.jsp,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. OAR–2003–0161, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edkpub/index.jsp.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, Docket ID Number OAR–2003–0161, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed action, contact Mr. H. Lynn Dail, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Coatings and Consumer Products Group (C539–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2363, fax number (919) 541–5689, e-mail address: *dail.lynn@epa.gov.* For questions on the residual risk analysis, contact Ms. Maria Pimentel, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Risk and Exposure Assessment Group (C404–01),

Research Triangle Park, North Carolina 27711, telephone (919) 541–5280, fax number (919) 541–0840, e-mail address: *pimentel.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the national emission standards include:

Category	NAICS [a] code	Examples of regulated entities
Industry	334613, 322222, 325992 ...	Operations at major sources that are engaged in the surface coating of magnetic tape.
Federal Government	.....	Not affected.
State, local, tribal government	.....	Not affected.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the magnetic tape national emission standards. To determine whether your facility would be affected by the magnetic tape national emission standards, you should examine the applicability criteria in 40 CFR part 63.701(a) of subpart EE (national emission standards for magnetic tape manufacturing operations). If you have any questions regarding the applicability of the magnetic tape national emission standards to a particular entity, contact Mr. Lynn Dail, listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed action will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Related Information. We have prepared two summary documents covering the development of, and the rationale for, this proposal and the residual risk analysis. These reports are entitled: ''Hazardous Air Pollutant Emissions from Magnetic Tape Manufacturing Operations—Background Information for Technology and Residual Risk Review'' and ''Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category.'' Both documents are available in Docket ID No. OAR–2003–0161. See the ''Docket'' section above for docket information.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division, EPA (C539–03), Research Triangle Park, NC 27711, telephone (919) 541–7946.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

For area sources, CAA Section 112(d)(5) provides that in lieu of MACT, the Administrator may elect to promulgate standards or requirements which provide for the use of generally available control technologies or management practices and such standards are commonly referred to as generally available control technology (GACT) standards.

EPA is then required to review these technology-based standards and to revise them ''as necessary, taking into account developments in practices, processes and control technologies,'' no less frequently than every 8 years.

The second stage in standard-setting is described in section 112(f) of the CAA. This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (''Residual Risk Report to Congress,'' EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) requires us to determine for each section 112(d) source category whether the MACT standards protect public health with an ample margin of safety. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to

emissions from a source in the category or subcategory to less than one in one million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety. EPA must also adopt more stringent standards to prevent an adverse environmental effect (defined in section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What did the magnetic tape national emission standards accomplish?

On December 15, 1994, we promulgated the national emission standards for magnetic tape manufacturing operations (59 FR 64580) and required existing sources to comply with the national emission standards by December 15, 1996.

The Magnetic Tape national emission standards cover HAP emissions from surface coatings used in the manufacture of magnetic and optical recording media used in audio, video, computer and magnetic stripe tape and disks. The emission units regulated by the Magnetic Tape national emission standards are storage tanks, mix preparation equipment, coating operations, waste handling devices, condenser vents in solvent recovery, particulate transfer operations, wash sinks for cleaning removable parts, equipment for flushing fixed lines, and wastewater treatment operations. The Magnetic Tape national emission standards regulates only those sources located at major sources. During the development of the national emission standards, we identified 25 existing magnetic recording media and magnetic stripe facilities, of which 14 were considered major and, therefore, subject to the national emission standards. Currently, there are only six magnetic tape manufacturing facilities remaining in the United States, all of which are major.

In general, the current national emission standards require an overall HAP control efficiency of at least 95 percent for emissions from each solvent storage tank, piece of mix preparation equipment, coating operation, waste handling device, or condenser vent in solvent recovery. If an incinerator is used to control these emissions points, an outlet HAP concentration of no greater than 20 parts per million by volume by compound may be met, instead of achieving 95 percent control, as long as the efficiency of the capture system is 100 percent. If a coating with a HAP content no greater than 0.18 kilograms per liter (1.5 pounds per gallon) of coatings solids is used, that coating operation does not require further control.

Several solvent and particulate HAP are used in the magnetic tape manufacturing industry. Currently, the HAP solvents used to the greatest extent are methyl ethyl ketone (MEK) and toluene, and the particulate HAP are cobalt and cobalt compounds, used at one facility. One individual facility uses 0.4 pound per year (lb/yr) of acrylonitrile and another facility uses 7 lbs/yr of lead. At the time of promulgation of the national emission standards, however, the solvent HAP in use included MEK, toluene, methyl isobutyl ketone, toluene diisocyanate, ethylene glycol, methanol, xylenes, ethyl benzene, and acetaldehyde; and the particulate HAP included chromium, cobalt, and their respective compounds. Several of these HAP are no longer used in the industry. The HAP, MEK and toluene, are used at all facilities; however, HAP such as n-hexane, methanol, methyl isobutyl ketone, xylenes, triethylamine, phenol, styrene, hydrogen cloride, ethyl acrylate and ethyl benzene are selectively used at individual facilities according to their coating formulation. At the time of promulgation of the Magnetic Tape national emission standards, we estimated that these HAP emissions, including MEK and toluene, would be reduced by 2,080 Mg/yr (2,300 tpy) from a baseline of 4,060 Mg/yr (4,470 tpy).

C. What are the conclusions of the residual risk assessment?

Source Category Characterization

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by magnetic tape manufacturing operations after implementation of the national emission standards. We compiled a list of the six magnetic tape manufacturing facilities still in operation in the United States based on inventory information we gathered from a number of manufacturing facilities and State environmental program offices (e.g., whether these facilities were still operating and manufacturing magnetic tape).

Emissions Data

The major HAP emitted by the magnetic tape manufacturing source category are MEK and toluene, which comprise 97 percent of all emissions in the source category. Other HAP such as n-hexane, methanol, methyl isobutyl ketone, xylenes, triethylamine, phenol, styrene, hydrogen chloride, ethyl acrylate, and ethyl benzene are used at individual facilities in very small amounts. The six magnetic tape manufacturing facilities have HAP emissions ranging from 3.9 to 214 Mg/yr (4.3 to 236 tpy). The total annual HAP emissions, nationally, are estimated to be 468 Mg/yr (516 tpy).

The primary sources of emissions and parameter data for the residual risk assessment were the 1999 National Emissions Inventory, 2000 Toxics Release Inventory, State offices, and the facilities involved. The emissions and parameter data used for the residual risk assessment have been placed in the docket. Using these data, we modeled exposure concentrations surrounding the six facilities, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multipathway and ecological risks.

While the emissions data used in the residual risk assessment represent actual levels of emissions for the base year, we believe these levels are not substantially different from the maximum emission levels allowed under the current national emission standards. Therefore, the results of the risk assessment represent our approximation of the maximum risks which would be allowed under compliance with the national emission standards.

Results

Consistent with the tiered modeling approach described in the Residual Risk Report to Congress, the risk assessment for this source category started with a simple assessment which used conservative assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary. The assessment is described in detail in the memorandum ''Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category'' and the addendum memorandum, available in the docket. The assessment was peer reviewed by EPA scientists and revised, and the peer review comments have also been placed in the docket. Brief summaries of the results follow.

Cancer. One of the six facilities within the magnetic tape manufacturing source category was quantitatively

assessed for potential cancer risks due to the acrylonitrile emissions from the facility. Acrylonitrile is classified as a probable human carcinogen by EPA. The other five facilities did not emit any amount of known, probable, or possible carcinogens. The estimated maximum lifetime (i.e., 70-year) individual cancer risk associated with the facility was 1-in-100 million, or 0.01-in-a million. This is significantly less than the statutory trigger of 1-in-a million in section 112(f)(2) of the CAA.

Chronic noncancer. The maximum chronic noncancer hazard indices (HI) were calculated for the emissions of all the noncarcinogens with published health threshold values for all six of the existing facilities. The maximum target organ-specific HI calculated for any of the facilities was 0.3, the major portion of the risk stemming from predicted exposures to cobalt. Cobalt is a respiratory toxicant when inhaled, but the chronic inhalation of air concentrations below 0.1 microgram per cubic meter ($\mu g/m^3$) is considered to be without risk of adverse health effects, as stated in the Agency for Toxic Substances and Disease Registry's Toxicological Profile. Since all noncancer exposures were well below a target organ-specific HI of 1, we do not believe that chronic exposures from these facilities pose a public health concern.

Acute. All maximum predicted 1-hour exposure concentrations for the pollutants emitted by the six magnetic tape manufacturing facilities were below all appropriate acute dose-response values. Therefore, we do not believe that acute exposures from these facilities pose any potential for a public health concern.

Human health multipathway and ecological. Some persistent and bioaccumulative (PB) HAP may pose human health risks via exposure pathways other than inhalation and can also pose ecological risks by entering the wildlife food chain. Based on emissions data obtained for the magnetic tape manufacturing source category, lead is the only PB HAP reported as emitted by magnetic tape sources. Lead is a neurotoxicant when ingested or inhaled above acceptable concentration levels. Therefore, we investigated lead for potential human health impact via noninhalation pathways (*e.g.*, ingestion).

Lead was reported as emitted by one of the six facilities in the magnetic tape manufacturing source category. Although lead is not typically emitted from magnetic tape manufacturing processes, we nonetheless included those emissions in our analysis in an attempt to capture the worst-case impact for the facility.

The maximum annual average air concentration of lead associated with this facility was estimated at 0.00032 $\mu g/m^3$. The maximum soil concentration of lead due to deposition over a 30-year time period at a census block centroid was estimated at 4.6 milligrams per gram. All of the predicted blood lead levels associated with the one facility were estimated at concentrations ranging from 2.5 to 4.2 micrograms per deciliter ($\mu g/dL$) for the various age groups evaluated. The reference value which represents a level of concern for children as specified by EPA and the Centers for Disease Control and Prevention is 10 $\mu g/dL$. Thus, no significant human health multipathway risks are expected.

We also consider the potential for adverse environmental effect as part of the assessment. Regarding the inhalation exposure to pathway for terrestrial mammals, we conclude that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. Therefore, because the maximum predicted cancer risks and noncancer hazards to humans from inhalation exposure are extremely low, we expect there to be no significant or widespread adverse effect to terrestrial mammals from inhalation exposure to HAP emitted from facilities in this source category. Further, to ensure that the potential for adverse effect to wildlife (including birds) resulting from noninhalation exposure is low, we carried out a screening-level multipathway assessment of the potential for adverse ecological effect due to the deposition of lead. The predicted soil lead concentrations from the one facility that emits lead are low compared to the screening value for lead in soil; therefore, we do not expect any unacceptable risks to ecological receptors. Since our results showed no screening-level ecological effect, we do not believe that there is any potential for an adverse effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, EPA concluded that a consultation with the Fish and Wildlife Service is not necessary.

Assessment Conclusions

Since our assessment shows that the Magnetic Tape national emission standards pose maximum lifetime excess cancer significantly less than 1-in-1 million, and since noncancer health risks and ecological risks were found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA.

EPA recognizes that there may be circumstances where it would be appropriate to delist a source category even after MACT standards has been implemented. For example, an industry may have changed sufficiently in the years since the category was listed and the MACT standards issued, such that even in the absence of the MACT standards, emissions from the category would be sufficiently low to meet the criteria of section 112(c)(9). However, in the present case we have not developed data to support such an approach. We request comment on this approach. We also request comment (with supporting data) on whether this industry has changed such that it would be appropriate to delist the source category or a distinct subcategory.

D. What are the conclusions of the technology review?

Section 112(d)(6) of the CAA requires EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under section 112 no less often than every 8 years. We reviewed available information about the industry, talked with industry representatives, and contacted several facilities in the industry to investigate available emission control technologies and the potential for additional emission reductions. We did not identify any additional control technologies beyond those that are already in widespread use within the source category (e.g., carbon adsorbers, condensers). The only developments identified involve improvements in the performance of existing technologies or increased frequency of inspections and testing, which would achieve only small incremental emission reductions, as indicated in the previous section. The only major technical advances we discovered were the development of two new technologies (optical recording media and solid state recording (SSR) media), which may eventually supplant magnetic tape. However, optical recording media and SSR media are not considered magnetic tape and would not be covered under the Magnetic Tape national emission standards. These new technologies, along with industry consolidation and competition from foreign producers, which have lower production costs (primarily labor costs) than domestic producers, have been identified as the primary reasons for the overall decline of this industry sector. Therefore, our investigation did not identify any significant developments in

practices, processes, or control technologies in the magnetic tape manufacturing industry since promulgation of the original standards in 1994.

In light of today's low-risk finding under section 112(f) (i.e., that, given compliance with the existing MACT standards, every source in the category poses excess lifetime individual cancer risks less than 1-in-a-million and no significant noncancer or ecological risks), the Agency seeks comment on the notion that, barring any unforeseeable circumstances which might substantially change this source category or its emissions, we would have no obligations to conduct future technology reviews under CAA section 112(d)(6).

II. Proposed Action

Because the existing national emission standards continues to represent the best controls that can be implemented nationally, we believe that no further revisions to the standards are needed under section 112(d)(6) of the CAA.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any information collection burden. It will not change the burden estimates from those previously developed and approved for the existing national emission standards. However, OMB has previously approved the information collection requirements contained in the existing regulation (59 FR 64580, December 15, 1994) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have assigned OMB control number 2060–0326, ICR No. 1678.05. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division, EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov*, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed action will not impose any requirements on small entities. We are proposing no further action at this time to revise the national emission standards. Today's proposed action requests public comments on the residual risk and technology review.

We continue to be interested in the potential impact of the proposed action on small entities and welcome comments on issues related to such impact.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the

Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. The rule imposes no enforceable duty on State, local, or tribal governments, or the private sector. Thus, today's proposed action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed action contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's proposed action does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed action from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's proposed action.

G. Executive Order 13045, Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effect of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The proposed action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's proposed decision is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's proposed decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The proposed action does not involve technical standards. Therefore, EPA is not considering the use of any VCS. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in the proposed action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 18, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–21186 Filed 10–21–05; 8:45 am]

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Notices

Federal Register
Vol. 70, No. 204
Monday, October 24, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 05–063–1]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of international standard-setting activities of the World Organization for Animal Health, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0097 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–063–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–063–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mr. John Greifer, Director, Trade Support Team, International Services, APHIS, room 1132, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–7677. For specific information regarding standard-setting activities of the World Organization for Animal Health, contact Dr. Michael David, Director, Sanitary International Standards Team, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–5324. For specific information regarding the standard-setting activities of the International Plant Protection Convention or the North American Plant Protection Organization, contact Mr. Narcy Klag, Program Director, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8469.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law by the President on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

''International standard'' is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the World Organization for Animal Health (OIE, formerly known as the Office International des Epizooties), regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities, and USDA's Animal and Plant Health Inspection Service (APHIS)

informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to international standards for plant and animal health and representing the United States with respect to these standards. Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT.**

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 167 member nations, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country. The WTO has recognized the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve this through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of member countries for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to member countries. Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to member countries for consultation (review and comment). Draft standards are revised accordingly and then presented to the OIE General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 21–26, 2006, in Paris, France. Currently, the Minister-Counselor and APHIS Regional Director for Europe, Middle East, and Africa is the official U.S. delegate to the OIE. The Minister-Counselor and APHIS Regional Director intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about current and past OIE draft Code chapters may be found on the Internet at *http://www.aphis.usda.gov/vs/ncie/oie/* or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

OIE Code Chapters Up for Adoption

Existing Code chapters that may be revised and new chapters that may be drafted in preparation for the next General Session in 2006 include the following:

1. Avian Influenza and Its Associated Appendix on Surveillance

The new proposed chapter on avian influenza introduces some significant changes. Only minor changes were incorporated into the chapter during the General Session. The more substantive country comments submitted to the OIE were carefully considered by the Code Commission during their September meeting. Any changes made during that meeting will be provided to member countries for review during late October or early November 2005.

2. Foot and Mouth Disease (FMD) and Its Associated Appendix on Surveillance

This chapter and its associated appendix on FMD surveillance has been updated to reflect current knowledge of FMD epidemiology and surveillance.

3. Bovine Spongiform Encephalopathy (BSE) and Its Associated Appendix on Surveillance

This chapter was adopted with several amendments. There is a commitment by the OIE to reconvene the ad hoc group to work on the Type A and Type B surveillance models mentioned in the appendix to better define these levels of surveillance and to clarify any sampling levels that may be recommended. Countries classified under the five-category system for BSE will retain their current classification for a 1-year transition period, after which time they will be reclassified under the new three-level classification system.

4. Zoning and Compartmentalization [1]

This chapter was modified to include language on partnership between the national veterinary services and the private sector, and to clarify the role of the national veterinary services in ensuring the integrity of a given compartment.

5. Criteria for Listing Diseases

This chapter is continuously being updated to reflect changes to the list of animal diseases that are required to be reported by Member Countries.

6. General Guidelines for Animal Health Surveillance

This is a new appendix that provides some generic guidelines for Member Countries on the criteria to consider when embarking on animal health surveillance programs.

7. Bluetongue

This chapter was recently updated to reflect the current knowledge on bluetongue virus epidemiology.

[1] This chapter was formerly known as Regionalization and Compartmentalization. The OIE is proposing the use of the term ''zoning'' in place of the term ''regionalization'' for this chapter to minimize confusion between member countries.

8. Classical Swine Fever

This chapter was updated slightly to reflect current knowledge on classical swine fever virus epidemiology.

Code Commission Future Work Program

During the next few years, the OIE Code Commission is expected to address the following issues or establish ad hoc groups of experts to update and/or develop standards for the following issues:

1. Companion Animal Welfare

This would be a new chapter intended to provide guidelines for the control of feral companion animals in urban settings.

2. Wildlife and Zoo Animal Welfare

This would be a new chapter intended to provide guidelines on the harvesting or culling of zoological and wildlife animals.

3. Laboratory Animal Welfare

This would be a new chapter intended to provide guidelines for the housing of laboratory animals, the use of animals in regulatory testing, and alternatives to animal use.

4. Terrestrial Animal Welfare

This would be a new chapter intended to provide general guidelines for the housing and production of terrestrial animals.

5. Animal Identification and Traceability

This would be a new chapter intended to improve procedures for identifying animals and animal products and monitoring their movements.

6. Johne's Disease (Paratuberculosis)

This would represent a complete redrafting of a current OIE Code chapter that has been determined to be outdated. A draft should be available within 1 or 2 years.

7. Brucellosis

This would represent a complete redrafting of a current OIE Code chapter that has been determined to be outdated.

8. African Horsesickness

This would represent a complete redrafting of a current OIE Code chapter that has been determined to be outdated.

9. Surra

This would represent a complete redrafting of a current OIE Code chapter that has been determined to be outdated.

10. Dourine

This would represent a complete redrafting of a current OIE Code chapter that has been determined to be outdated.

The Process

These chapters are drafted (or revised) by either the Code Commission or by ad hoc groups composed of technical experts nominated by the Director General of the OIE by virtue of their subject-area expertise. Once a new chapter is drafted or an existing one revised, the chapter is distributed to member countries for review and comment. The OIE attempts to provide proposed chapters by late October to allow member countries sufficient time for comment. Comments are due by early February of the following year. The draft standard is revised by the OIE Code Commission on the basis of relevant scientific comments received from member countries.

The United States (*i.e.*, USDA/APHIS) intends to review and, where appropriate, comment on all draft chapters and revisions once it receives them from the OIE. USDA/APHIS intends to distribute these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment. Additional information regarding these draft standards may be obtained by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

Generally, if a country has concerns with a particular draft standard, and supports those concerns with sound technical information, the pertinent OIE Code Commission will revise that standard accordingly and present the revised draft for adoption at the General Session in May. In the event that a country's concerns regarding a draft standard are not taken into account, that country may refuse to support the standard when it comes up for adoption at the General Session. However, each member country is obligated to review, comment, and make decisions regarding the adoption of standards strictly on their scientific merits.

Other OIE Topics

Every year at the General Session, two technical items are presented. For the May 2006 General Session, the following technical items will be presented:

1. Future approaches needed to ensure that veterinary education meets social demands.

2. Economic and social justification for investment in animal health and zoonosis.

The information in this notice includes all the information available to us on OIE standards currently under development or consideration. Information on OIE standards is available on the Internet at *http://www.oie.int*. Further, a formal agenda for the next General Session should be available to member countries by March 2006, and copies will be available to the public once the agenda is published. For the most current information on meeting times, working groups, and/or meeting agendas, including information on official U.S. participation in OIE activities, and U.S. positions on standards being considered, contact Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any areas of work under the OIE may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Dr. Michael David.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is placed under the authority of the FAO, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC will enter into force on the thirtieth day after two-thirds of the current contracting parties notify the Director General of FAO of their acceptance of the amendment. At this date, 87 of the required 92 member countries have deposited their official letters of acceptance. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program. The steps for developing a standard under the revised IPPC are described below.

Step 1: Proposals for a new international standard for phytosanitary measures (ISPM) or for the review or revision of an existing ISPM are submitted to the Secretariat of the IPPC in a standardized format on a 2-year cycle. Alternately, the Secretariat can propose a new standard or amendments to existing standards.

Step 2: After review by the Standards Committee and the Strategic Planning and Technical Assistance Working Group, a summary of proposals is submitted by the Secretariat to the ICPM. The ICPM identifies the topics and priorities for standard setting from among the proposals submitted to the Secretariat and others that may be raised by the ICPM.

Step 3: Specifications for the standards identified as priorities by the ICPM are drafted by the Secretariat. The draft specifications are submitted to the Standards Committee for approval/amendment and are subsequently made available to members and regional plant protection organizations (RPPOs) for comment (60 days). Comments are submitted in writing to the Secretariat. Taking into account the comments, the Standards Committee finalizes the specifications.

Step 4: The standard is drafted or revised in accordance with the specifications by a working group designated by the Standards Committee. The resulting draft standard is submitted to the Standards Committee for review.

Step 5: Draft standards approved by the Standards Committee are distributed to members by the Secretariat and RPPOs for consultation (100 days). Comments are submitted in writing to the Secretariat. Where appropriate, the Standards Committee may establish open-ended discussion groups as forums for further comment. The Secretariat summarizes the comments and submits them to the Standards Committee.

Step 6: Taking into account the comments, the Secretariat, in cooperation with the Standards Committee, revises the draft standard. The Standards Committee submits the final version to the ICPM for adoption.

Step 7: The ISPM is established through formal adoption by the ICPM according to Rule X of the Rules of Procedure of the ICPM.

Step 8: Review of the ISPM is completed by the specified date or such other date as may be agreed upon by the ICPM.

Each member country is represented on the ICPM by a single delegate. Although experts and advisers may accompany the delegate to meetings of the ICPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard up for approval. Parties involved in a vote by the ICPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. The United States also has a representative on the Standards Committee. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. The full text of each standard will be available on the Internet at *http://www.aphis.gov/ppq/pim/standards/*. Interested individuals may review the standards posted on this Web site and submit comments via the Web site.

The next ICPM meeting is scheduled for April 3–7, 2006, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ program is the U.S. delegate to the ICPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standards up for adoption. The provisional agenda for the Eighth Session of the Interim Commission on Phytosanitary Measures is as follows:

1. Opening of the session.
2. Adoption of the agenda.
3. Report by the chairperson.
4. Report by the Secretariat.
5. Standards up for adoption in 2006.
6. Items arising from the Seventh Session of the ICPM (see section below entitled ''New Standard Setting Initiatives'' for details).
7. Work program for harmonization.
8. Status of the 1997 revised IPPC.
9. Other business.
10. Date and venue of the next meeting.
11. Adoption of the report.

IPPC Standards Up for Adoption in 2006

It is expected that the following standards will be sufficiently developed to be considered by the ICPM for adoption at its April 2006 meeting. The United States, represented by APHIS' Deputy Administrator for PPQ, will participate in the consideration of these standards. The U.S. position on each of these issues will be developed prior to the ICPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders. The standards that are most likely to be considered for adoption include:

1. Revision of ISPM 1, Principles for the Protection of Plant Health

This standard describes principles and concepts for the protection of plant health that are embodied in the New Revised Text of the IPPC (1997). It covers principles related to the protection of plants, including cultivated and non-cultivated/unmanaged plants and wild flora, principles regarding the application of phytosanitary measures to the international movement of people, commodities, and conveyances, as well as other principles and concepts inherent in the objectives of the IPPC (1997).

2. Guidelines for Consignments in Transit

This standard describes procedures to identify, assess, and manage phytosanitary risks associated with consignments of regulated articles passing through, but not destined for, the territory of a country, in such manner that any phytosanitary measures applied in the country of transit are technically justified and necessary to prevent the introduction into and/or spread of pests within that country.

3. Requirements for the Establishment and Maintenance of Pest-Free Areas for Tephritid Fruit Flies

This standard provides the guidelines to establish, maintain, and verify pest-free areas for tephritid fruit flies. This standard applies to all fruit flies of economic importance.

4. Diagnostic Protocols for Regulated Pests

This standard provides specific guidance on the structure and content of diagnostic protocols. It also provides guidance on how these protocols will be initiated, reviewed, and published. These protocols describe procedures and methods for the detection and identification of pests that are regulated by contracting parties and relevant for international trade. They are addressed to diagnosticians/diagnostic laboratories performing official tests as part of phytosanitary measures. They provide at least the minimum requirements for reliable diagnosis of the relevant pests.

5. Requirements for the Submission of Phytosanitary Treatments

This standard describes the criteria for a phytosanitary treatment and the requirements for submitting a proposed phytosanitary treatment for inclusion in the ISPM under development on phytosanitary treatments. Treatments considered in this standard are applied to commodities or to regulated articles. Pesticide registration is the responsibility of each contracting party and is not part of this standard.

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group meetings or other technical consultations will take place during 2005 and 2006 on the topics listed below. These standard-setting initiatives are not expected to be completed prior to April 2006 and, therefore, will not be ready for adoption at the 2006 ICPM session. Nonetheless, APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. Classification of Commodities by Phytosanitary Risk to Level of Processing and Intended Use

This will be developed as a concept standard and provide guidance for NPPOs for facilitating the classification of different types of commodities into phytosanitary risk categories, taking into account the level of processing and the intended use. It will also provide guidance for determining risk management measures expressed as import phytosanitary requirements for plants, plant products, and regulated articles.

2. Guidelines for Formatting/Drafting Pest and Commodity Specific ISPMs

These standards will provide guidelines for formatting a list of pests associated with commodities and phytosanitary measures related to the commodity and for formatting aspects of a data sheet of a pest and/or a phytosanitary measure related to that specific pest.

3. Debarking of Wood and Bark Freedom

This standard will provide a practical and useful description of what constitutes debarked and bark-free wood. This standard, therefore, will propose tolerances for bark in relation to the definitions of debarked and bark-free wood.

4. Guidelines on Sampling of Consignments

This standard will provide guidelines on sampling for import, export, and transit of consignments.

5. Post-Entry Quarantine Facilities

This standard will provide information on the design and operation of containment facilities at different security levels where organisms, including plants and biocontrol agents, can be grown in an environment where there is minimal potential for the escape of pests.

For more detailed information on the above topics, which will be addressed by various working groups established by the ICPM, contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts draft standards on the Internet (*http://www.aphis.usda.gov/ppq/pim/standards/*) as they become available and provides information on when comments on standards are due. Additional information on IPPC standards is available on the FAO's Web site at *http://www.ippc.int/IPP/En/default.htm.* For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Mr. Klag.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade. NAPPO conducts its business through panels and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. These panels are made up of representatives from each member country who have scientific expertise related to the policy or standard being considered. Proposals drawn up by the individual panels are circulated for review to Government and industry officials in Canada, Mexico, and the United States, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various Government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.aphis.usda.gov/ppq/pim/standards/;* interested persons may submit comments via that Web site. Once revisions are made, the proposal is sent to the NAPPO working group and the NAPPO standards panel for technical reviews and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting is scheduled for October 17–21, 2005, in Puerto Vallarta, Mexico. The NAPPO Executive Committee meeting will take place on October 16, 2005, and a special session will be held on October 17, 2005, to solicit comment from industry groups so that suggestions can be incorporated into the NAPPO work plan for the 2006 NAPPO year. The Deputy Administrator for PPQ is a member of the NAPPO Executive Committee. The

Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption or any proposals to develop new standards.

The work plan for 2005 was established after the October 2004 Annual Meeting in Vancouver, Canada. The Deputy Administrator for PPQ participated in establishing this NAPPO work plan (see panel assignments below). Below is a summary of current panel assignments as they relate to the ongoing development of NAPPO standards. The United States (i.e., USDA/APHIS) intends to participate actively and fully in the work of each of these panels. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following panels, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at *http://www.nappo.org* or by contacting Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above).

1. Accreditation Panel

The panel will develop an audit protocol for reviewing compliance with the NAPPO laboratory accreditation standard (RSPM No. 9). They will then use this protocol to audit the programs in the three NAPPO countries starting with the United States. They will review and update the current NAPPO laboratory accreditation standard (RSPM No. 9).

2. Biological Control Panel

This panel will complete the Taxonomic Resources Position Paper, develop guidelines for the movement of commercial shipments of arthropod biological control agents among NAPPO member countries, and exchange information on biological control programs in the NAPPO countries.

3. Biotechnology Panel

This panel will continue to develop a NAPPO standard for the review of products of biotechnology that focuses on the assessment of the potential to present a plant pest risk. The final module, importation for uses other than propagation, will be developed.

4. Citrus Panel

The panel will update the pest lists in the Citrus Standard, based on new pest information.

5. Electronic Phytosanitary Certification Panel

This panel will develop guidelines for the electronic transmission of phytosanitary certificates.

6. Forestry Panel

This panel will coordinate the implementation of ISPM 15 by NAPPO member countries.

7. Fruit Panel

The panel will coordinate with other appropriate panels to start the development of a standard for the use of genetically modified fruit flies in North America.

8. Grapevine Panel

The panel will provide direction and support to the Technical Advisory Group to include insects and nematodes in the NAPPO standard for grapevines (RSPM No. 15). They will participate in the development of the NAPPO standard on plants for planting.

9. Potato Panel

The panel will develop an appendix to RSPM No. 3 on nematode identification and update appendix 5 based on the latest molecular information for potato virus YN (PVYn).

10. Propagative Material Panel

The panel will complete the standard on plants for planting.

11. Standards Panel

The panel will continue to provide updates on standards for the NAPPO newsletter, coordinate the review of new and amended NAPPO standards and ensure that comments received during the country consultation phase are incorporated as appropriate, organize conference calls and prepare NAPPO discussion documents for possible use at the IPPC, and promote implementation of recently adopted standards.

The PPQ Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice includes all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, check the NAPPO Web site on the Internet at *http://www.nappo.org* or contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Mr. Klag. Those wishing to provide comments on any of the topics being addressed by any of the NAPPO panels may do so at any time by responding to this notice (see **ADDRESSES** above) or by transmitting comments through Mr. Klag.

Done in Washington, DC, this 18th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–5853 Filed 10–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Tuesday, November 15, 2005, in Orofino, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on November 15, will be at the Clearwater National Forest Supervisors Office, 12730 Highway 12, Orofino, Idaho, beginning at 10 a.m. (P.S.T.). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (P.S.T.).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Dated: October 18, 2005.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 05–21190 Filed 10–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligiblility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD SEPTEMBER 20 OCTOBER 18, 2005

Firm	Address	Date petition accepted	Product
Industrial Rubber Products, LLC.	415 Sonnier Road, Carencro, LA 70525.	20–Sep–05	Rubber products including gaskets and seals.
Gulf Packing Company, L.P.	618 Commerce, San Benito, TX 78586.	20–Sep–05	Fresh meat.
Delaware Diamond Knives, Inc.	3825 Lancaster Pike, Wilmington, DE 19805.	20–Sep–05	Diamond and steel knives for use in medical research and manufacturing operations, ophthalmic surgery and pathology.
Travis Pattern & Foundry, Inc.	1413 E. Hawthrone Road, Spokane, WA 99218.	20–Sep–05	Irrigation system equipment, power connectors and various foundry products such as aluminum castings.
Rhema Durascreen, Inc	14950 Industrial Park Drive, Lead Hill, AR 72644.	20–Sep–05	Wooden and aluminum frames for screen printing.
RB Industries Inc	1801 Vine, Harrisonville, MO 67701.	22–Sep–05	Saws, planer/mounler/rip machines, router equipment and other woodworking accessories.
Diamond Fruit Growers, Inc	3515 Chevron Drive, Hood River, OR 97031.	22–Sep–05	Processes and packs pears, cherries, and a small amount of apples.
Arlington Machine and Tool Co.	99 New Dutch Lane, Fairfield, NJ 07004.	18–Oct–05	Machined parts and assemblies for various industries.
Laud Engineering Corp., Laub/Hunt Packaging Systems.	13547 Excelsior Drive, Norwalk, CA 90505.	18–Oct–05	Packaging equipment.
Goulston Technologies, Inc	700 N. Johnson Street, Monroe, NC 28110.	18–Oct–05	Preparation for the treatment of textile materials.
Syracuse Plastics, LLC	7400 Morgan Road, Liverpool, NY 13090.	18–Oct–05	Plastic injection molding.
Fenton Art Glass, Inc	700 Elizabeth Street, Williamstown, WV 26187.	18–Oct–05	Manufacturer of blown and decorative glass.
Mack & Mack Inc	220 South Elm Street, Greensboro, NC 27401.	18–Oct–05	Manufactures and distributes better woman's tops, pants, jackets, skirts, dresses, coats and accessories.
Fuzetron, Inc., dba Creative Industries.	1946 John Tower Avenue, El Cajon, CA 92020.	18–Oct–05	Pottery wheels.
Northwest Aluminum Specialties, Inc.	3313 West Second Street, The Dalles, OR 97058.	18–Oct–05	Aluminum bars of various sizes.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 18, 2005.

Benjamin Erulkar,

Chief Counsel.

[FR Doc. 05–21181 Filed 10–21–05; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 49–2005)

Foreign–Trade Zone 22 -- Chicago, Illinois, Area, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board), by the Illinois International Port District, grantee of FTZ 22, requesting authority to expand its zone in the Chicago area, within and adjacent to the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 14, 2005.

FTZ 22 was approved on October 29, 1975 (Board Order 108, 40 FR 51242, 11/4/75) and expanded on April 9, 1987 (Board Order 353, 52 FR 12217, 4/15/87); on December 11, 1992 (Board Order 614, 57 FR 61044, 12/23/92); on November 21, 2000 (Board Order 1127, 65 FR 76218, 12/6/00); on December 19, 2003 (Board Order 1313, 69 FR 49, 1/2/04); and, on May 9, 2005 (Board Order 1390, 70 FR 29276, 5/20/05).

The general–purpose zone project currently consists of (2,998 acres) in the Chicago area: *Site 1* (19 acres) -- within the Port's 2,250–acre Lake Calumet Harbor terminal facility; *Site 2* (578 acres) -- industrial park at One Diversatech Drive, Manteno; *Site 3* (8 acres) -- Gotoh Distribution Services, Inc., warehouse facility located at 703 Foster Avenue, Bensonville; *Site 4* (8 acres) -- Meiko America Inc. warehouse facility located at Gerry Drive and Hansen Court, Wood Dale; *Site 5* (2,029 acres) -- CenterPoint Intermodal Center, located east of Interstate 55 and south of Arsenal Road, Village of Elwood; *Site*6 (317 acres) -- within the 371–acre Rock Run Business Park located in the northwest quadrant of Houbolt Road and Interstate 80, Joliet; and, Temporary *Site 7* (39 acres) -- within the O'Hare Express North Industrial Park, 893 Upper Express Drive, Chicago.

The applicant is now requesting authority to expand the general–purpose zone to include four additional sites in the area: *Proposed Site 8* (142 acres) -- within the 187–acre ProLogis Park 80, located north of Interstate 80 and west of Highway 47, Morris (Grundy County); *Proposed Site 9* (12 acres) -- Eagle Global Logistics facility (within the Centex Industrial Park), 1717 Busse Road, Elk Grove Village (Cook County); *Proposed Site 10* (43 acres) -- Bolingbrook Distribution Center, 1701 Remington Boulevard, Bolingbrook (Will County); and, *Proposed Site 11* (157 acres, 2 parcels) -- Heartland Corporate Center, 21228 SW Frontage Road, Shorewood (Will County). The applicant is also requesting that 41 acres at *Site 5* (CenterPoint Intermodal Center) be restored to zone status and that *Temporary Site 7* (39 acres) be granted zone status on a permanent basis. (A minor boundary modification was approved on January 11, 2005 (A(27f)-2–2005), removing 41 acres from Site 5 to establish the temporary site.) The sites will be used primarily for warehousing and distribution activities. The owners of the sites are ProLogis, Eagle Global Logistics, LIT Industrial Limited Partnership, and CenterPoint Properties. No specific manufacturing authority is being requested at this time. Such requests would be made on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is December 23, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to January 9, 2006).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 55 West Monroe Street, Suite 2400, Chicago, IL 60603.

October 14, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–21217 Filed 10–21–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 50–2005)

Foreign–Trade Zone 38 Greenville–Spartanburg, SC, Application for Subzone Status, Benteler Automotive Corporation Plant (Automotive Suspension Components), Duncan, South Carolina

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special–purpose subzone status for the automotive suspension components manufacturing plant of Benteler Automotive Corporation (BAC)(a subsidiary of Benteler AG, of Germany) located in Duncan, South Carolina. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 17, 2005.

The BAC plant (32 acres/191,000 sq. ft.) is located at 1255 Howell Road in Duncan (Spartanburg County), South Carolina. The facility (130 employees) is used to produce front and rear suspension subassemblies and modules for automobiles and light trucks (up to 250,000 units annually) for export and the domestic market. The manufacturing process at the facility involves machining, assembly, coating, and testing, using domestic and foreign–origin inputs. Components that are, or may be, purchased from abroad (representing about 40% of total, by value) used in manufacturing include: pressure hoses, steering components, stabilizer bars, bushings, brackets, ARS active stabilizers and motors, active steering systems, fasteners, steering knuckles, sensors (ABS, wheel speed, height), drive shafts, differentials, links, shock absorbers, supports, retainers, inner tubes, rotors, calipers, shields, brake hoses, brake shoes, electronic damping controllers, ball joints, electro–mechanical brake components, springs, seals, adjuster screws, stabilizers, and motors (duty rate range: free - 4.5%).

FTZ procedures would exempt BAC from Customs duty payments on the foreign components used in production for export to non–NAFTA countries. On domestic shipments transferred in–bond to U.S. automobile assembly plants with subzone status, no duties would be paid on the foreign components used in automobile and light truck production until the finished vehicles are formally entered for consumption, at which time the finished automobile duty rate (2.5%) would be applied to the foreign–origin components. For the individual suspension components and subassemblies withdrawn directly by BAC for Customs entry, the finished automotive part rate (2.5%) could be applied to the foreign inputs noted above. The application indicates that subzone status would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building 4100W, 1099 14th Street, NW, Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB 4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is December 23, 2005. Rebuttal comments

in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to January 9, 2006.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address No.1 listed above and at the Office of the Port Director, U.S. Customs and Border Protection, 150–A West Phillips Road, Greer, SC 29650.

Dated: October 17, 2005.

Dennis Puccinelli,

Executive Secretary,

[FR Doc. 05–21216 Filed 10–21–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: ammonium nitrate from the Russian Federation.

SUMMARY: On April 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the suspended antidumping duty investigation on ammonium nitrate from the Russian Federation (''Russia'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Initiation of Five-year (''Sunset'') Reviews*, 70 FR 16800, (April 1, 2005) (''*Initiation Notice*''). On the basis of notices of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department is conducting a full (240-day) review. As a result of this review, the Department preliminarily finds that termination of the suspended antidumping duty investigation on ammonium nitrate from Russia would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Sally Gannon or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0162, or 482–0172, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by the sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia include solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope of this sunset review is dispositive.

History of the Suspension Agreement

On August 12, 1999, the Department initiated an antidumping duty investigation under section 732 of the Act on ammonium nitrate from Russia. *See Initiation of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 64 FR 45236 (August 19, 1999). On January 7, 2000, the Department preliminarily determined that ammonium nitrate from Russia is being, or is likely to be, sold in the United States at less than fair value. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

The Department suspended the antidumping duty investigation on ammonium nitrate from Russia effective May 19, 2000. The basis for this action was an agreement between the Department and the Ministry of Trade of the Russian Federation (''MOT'') accounting for substantially all imports of ammonium nitrate from Russia, wherein the MOT has agreed to restrict exports of ammonium nitrate from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed reference price. *See Suspension of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 37759, (June 16, 2000) (''*Suspension Agreement*''). Thereafter, pursuant to a request by the petitioner, the Committee for Fair Ammonium Nitrate Trade (''COFANT''), the Department completed its investigation and published in the **Federal Register** its final determination of sales at less that fair value. *See Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669, (July 11, 2000) (''*Final Determination*''). In the *Final Determination*, the Department calculated weighted–average dumping margins of 253.98 percent for Nevinnomyssky Azot, a respondent company in the investigation, and for the Russia–wide entity. The *Suspension Agreement* remains in effect for all manufacturers, producers, and exporters of ammonium nitrate from Russia.

Background

On April 1, 2005, the Department initiated a sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia, pursuant to section 751(c) of the Act. *See Notice of Initiation of Five-year (''Sunset'') Reviews*, 70 FR 16800 (April 1, 2005). The Department received Notices of Intent to Participate on behalf of COFANT and Agrium US Inc (''Agrium''), domestic interested parties in this proceeding, within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's Regulations. *See* Agrium's April 14, 2005, and COFANT's April 18, 2005, submissions to the Department. The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act. Id. In addition, the domestic interested parties assert that they are not related to a foreign producer/exporter and are not importers, or related to importers, of the subject merchandise. Id.

The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). *See* Agrium's April 29, 2005, and COFANT's May 2, 2005, substantive responses. Also, on May 2, 2005, the Department received a partial substantive response from respondent interested parties: MCC EuroChem (''EuroChem''); Novomoskovskiy Azot (''NAK''); Nevinnomyssky Azot; JSC Minudobreniya; JSC Acron; and JSC Dorogobuzh (collectively ''Russian respondents''). In their initial response, the Russian respondents requested a one-week extension to submit a complete substantive response. On May

4, 2005, COFANT submitted a letter to the Department objecting to the Russian respondents' extension request. The Department granted the Russian respondents an extension and on May 9, 2005, the Department received a substantive supplemental response from the Russian respondents. COFANT and the Russian respondents filed rebuttal briefs to each other's substantive responses on May 16, 2005. *See* COFANT's and the Russian respondents' rebuttal responses, dated May 16, 2005. On May 24, 2005, the Department issued a questionnaire to the Russian respondents, requesting additional information on their substantive responses. On June 1, 2005, the Russian respondents submitted this additional information.

In a sunset review, the Department normally will conclude that there is adequate response from respondent interested parties such that it is appropriate to conduct a full sunset review where respondent interested parties who filed complete substantive responses account for more than 50 percent, by volume, of total exports of subject merchandise to the United States. *See* Section 351.218(e)(1)(ii)(A) of the Department's regulations. After examining the respondent interested parties' total exports of the subject merchandise, the Department determined that the respondent interested parties, who filed complete substantive responses, accounted for the requisite amount of production. *See* Memorandum from the Sunset Team to Ronald Lorentzen, Acting Director, Office of Policy, ''Adequacy Determination: Sunset Review of the Antidumping Duty Suspension Agreement on Ammonium Nitrate from the Russian Federation,'' dated May 24, 2005. Because the respondent interested parties submitted an adequate response to the notice of initiation, the Department is conducting a full (240-day) sunset review in accordance with section 751(c)(5)(A) of the Act, and section 351.218(e)(1)(i) of the Department's regulations. On May 24, 2005, the Department notified the International Trade Commission (''ITC'') that it received an adequate response to the notice of initiation from the respondent interested parties and, therefore, is conducting a full (240-day) sunset review. The Department's preliminary results of this review were scheduled for July 20, 2005, and its final results of this review were scheduled for November 28, 2005. On July 19, 2005, the Department decided to extend time limits for its preliminary and final results in the full sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia because it needed additional time for its analysis. As a result of this extension, the Department is issuing the preliminary results of this sunset review on or about October 18, 2005 and the final results of this sunset review by February 27, 2006.

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the *Issues and Decision Memorandum for the Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation* (''*Decision Memorandum*'') from Ron Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, dated October 17, 2005, which is adopted by this notice. The issues discussed in the *Decision Memorandum* include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the suspended antidumping duty investigation to be terminated. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''October 2005.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Preliminary Results of Review

We preliminarily determine that termination of the suspended antidumping duty investigation on ammonium nitrate from Russia would likely lead to a continuation or recurrence of dumping at the following percentage weighted–average margin:

Exporter/manufacturer	Weighted–average margin (percent)
JSC Azot Nevinnomyssky	253.98
Russia–Wide	253.98

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Interested parties may submit case briefs no later than December 7, 2005, in accordance with section 351.309(c)(1)(i) of the Department's regulations. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than December 12, 2005. Any hearing, if requested, will be held on December 14, 2005, in accordance with section 351.310(d) of the Department's regulations. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than February 27, 2006.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 17, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5864 Filed 10–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and partial preliminary rescission of the administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers two manufacturers/exporters: Vita Food Factory (1989) Ltd. (Vita) and Thai Pineapple Canning Industry Corp., Ltd. (TPC). The period of review (POR) is July 1, 2003, through June 30, 2004.

We provided interested parties with an opportunity to comment on the preliminary results of review. However, we received no comments from interested parties. In these final results, we have made no changes to the weighted–average dumping margins calculated for TPC and Vita in the preliminary results of this administrative review.

EFFECTIVE DATE: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution

Avenue, NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on canned pineapple fruit from Thailand. *See Canned Pineapple Fruit From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 45651 (August 8, 2005) (*Preliminary Results*). No interested parties filed case briefs in response to the Department's invitation to comment on the *Preliminary Results*.

Scope of the Order

The product covered by the order is canned pineapple fruit, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. Imports of canned pineapple fruit are currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers canned pineapple fruit packed in a sugar–based syrup; HTSUS 2008.20.0090 covers canned pineapple fruit packed without added sugar (*i.e.*, juice–packed). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by this order is dispositive.

Partial Final Rescission of Review

As stated in the preliminary results of this review, the Department confirmed that Prachuab Fruit Canning Co., Ltd. (PRAFT) made no shipments of subject merchandise during the POR. Therefore, consistent with the Department's preliminary results of this review, and in accordance with 19 CFR § 351.213(d)(3), we are rescinding the instant review with respect to PRAFT.

Analysis of Comments Received

As noted above, we received no comments on the preliminary results of review. In these final results, we have made no changes to the weighted–average dumping margins calculated for TPC and Vita in the preliminary results of this administrative review.

Final Results of Review

We determine that the following weighted–average percentage margins exist for the period July 1, 2003, through June 30, 2004:

Manufacturer/Exporter	Margin (percent)
Vita Food Factory (1989) Ltd.	9.12
Thai Pineapple Canning Industry Corp., Ltd. ...	51.16

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR § 351.212(b)(1), we calculated importer–specific assessment rates for Vita's subject merchandise. Since Vita did not report the entered value for its sales, we calculated per–unit assessment rates for its merchandise by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the per–unit duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 CFR § 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on export prices. Where the importer–specific assessment rate is above *de minimis*, we will instruct CBP to assess the importer–specific rate uniformly on all entries made during the POR. For TPC, the respondent receiving a dumping margin based upon adverse facts available (AFA), we will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of canned pineapple fruit from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for Vita and TPC will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 24.64 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 17, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5863 Filed 10–21–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

[Docket No. 2005–P–071]

Patent and Trademark Office

Grant of Interim Extension of the Term of U.S. Patent No. 4,650,787; Vapreotide Acetate

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for

a one-year interim extension of the term of U.S. Patent No. 4,650,787.

FOR FURTHER INFORMATION CONTACT: Karin Ferriter by telephone at (571) 272–7744; by mail marked to her attention and addressed to Mail Stop Patent Ext., Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7744, or by e-mail to *Karin.Ferriter@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On April 7, 2005, H3 Pharma, Inc., an agent of the Administrators of the Tulane Educational Fund of New Orleans, Louisiana, the patent owner, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,650,787. The patent claims the active ingredient vapreotide acetate in the human drug product Sanvar®, and a method of use of said product. The application indicates that a New Drug Application for Sanvar® (vapreotide acetate) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Since the regulatory review period extended beyond the expiration date of the patent April 25, 2005, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,650,787 is granted for a period of one year from the expiration date of the patent, i.e., until April 25, 2006.

Dated: October 17, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–21191 Filed 10–21–05; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 194.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Wednesday, October 26, 2005.

CHANGES IN THE MEETING: The Rule Enforcement Review has been moved to Friday, October 28, 2005, at 11:45 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–21319 Filed 10–20–05; 2:24 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2006 Diagnosis Related Group (DRG) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS). It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amount and DRG relative weights to be used for FY 2006 under the TRICARE DRG-based payment system.

EFFECTIVE DATES: The rates, weights and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2005.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627. Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439). An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes. In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the TRICARE DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the two age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before

assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic. For admissions occurring on or after October 1, 2004, DRG 483 was deleted and replaced with DRGs 541 and 542, splitting the assignment of cases on the basis of the performance of a major operating room procedure. The description for DRG 480 was changed to ''Liver Transplant and/or Intestinal Transplant'', and the description for DRG 103 was changed to ''Heart/Heart Lung Transplant or Implant of Heart Assist System''. For FY 2006, CMS will implement classification changes, including surgical hierarchy changes. The TRICARE Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. TRICARE will also duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board. In addition, TRICARE will continue to utilize the out commuting wage index adjustment.

C. Revision of the Labor-Related Share of the Wage Index

TRICARE is adopting CMS' percentage of labor related share of the standardized amount. For wage index values greater than 1.0, the labor-related portion of the ASA shall equal 69.7 percent. For wage index values less than or equal to 1.0 the labor-related portion of the ASA shall continue to equal 62 percent.

D. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS for all hospitals subject to the TRICARE DRG-based payment system according to CMS's August 12, 2005, final rule.

E. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments (TRICARE reimburses hospitals for their capital costs as reported annually to the contractor on a pass through basis), we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2006, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2006, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $21,783 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

F. National Operating Standard Cost as a Share of Total Costs

The FY 2006 TRICARE National Operating Standard Cost as a Share of Total Costs (NOSCASTC) used in calculating the cost outlier threshold is 0.923. TRICARE uses the same methodology as CMS for calculating the NOSCASTC however, the variables are different because TRICARE uses national cost to charge ratios while CMS uses hospital specific cost to charge ratios.

G. Indirect Medical Education (IDME) Adjustment

Passage of the MMA of 2003 modified the formula multipliers to be used in the calculation of the indirect medical education IDME adjustment factor. Since the IDME formula used by TRICARE does not include disproportionate share hospitals (DSHs), the variables in the formula are different than Medicare's however; the percentage reductions that will be applied to Medicare's formula will also be applied to the TRICARE IDME formula. The new multiplier for the IDME adjustment factor for TRICARE for FY 2006 is 1.04.

H. Expansion of the Post Acute Care Transfer Policy

For FY 2006 TRICARE is adopting CMS' expanded post acute care transfer policy according to CMS' final rule published August 12, 2005.

I. Blood Clotting Factor

For FY 2006, TRICARE is adopting CMS' payment methodology for blood clotting factor according to CMS' final rule published August 12, 2005.

II. Cost to Charge Ratio

While CMS uses hospital-specific cost to charge ratios, TRICARE uses a national cost to charge ratio. For FY 2006, the cost-to-charge ratio used for the TRICARE DRG-based payment system will be 0.4060, which is increased to 0.4130 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.4468. For FY 2006, the neonatal cost-to-charge ratio of .64 is being reduced to the same cost-to-charge ratio of .4130 for acute care hospitals.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *http://www.tricare.osd.mil* under the sequential headings TRICARE Provider Information, Rates and Reimbursements, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-based payment system during FY 2006 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR Part 199.

Dated: October 18, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–21184 Filed 10–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Department of Defense Office of the Inspector General.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the Department of Defense Office of the Inspector General (DoD OIG), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

DATES: October 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Director, Human Capital Management Directorate, Office

of the Chief of Staff, OIG DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DoD OIG, PRB:

Charles W. Beardall, Director, Defense Criminal Investigative Service, Assistant Inspector General for Investigations, ODIG–INV.
Patricia A. Brannin, Assistant Inspector General for Audit Policy and Oversight, ODIG–I&P.
Paul J. Granetto, Assistant Inspector General for Defense Financial Auditing Service, ODIG–AUD.
L. Jerry Hansen, Deputy Inspector General for Inspections and Policy.
Melissa Heist, Assistant Inspector General for Audit, Environmental Protection Agency.
Donald M. Horstman, Director of Investigations of Senior Officials, ODIG–INV.
William B. Morrison, Assistant Inspector General for Inspections and Evaluations, ODIG–I&P.
Richard T. Race, Deputy Inspector General for Investigations.
Francis E. Reardon, Deputy Inspector General for Auditing.
George Rippey, Deputy Assistant Inspector General for Audit Services, Department of Education.
Linda Snider, Director for Audit Policy and Administration Sanford Parnes Counsel to the Inspector General, Department of Energy.
Mary L. Ugone, Assistant Inspector General for Acquisition and Technology Management, ODIG–AUD.
R. Keith West, Assistant Inspector General for Audit Follow-Up and Technical Support, ODIG–AUD.
Eugene L. Waszily, Assistant Inspector General for Auditing, General Services Administration.
Daniel F. Willkens, Deputy Director, Defense Criminal Investigative Service, ODIG–INV.
Shelton R. Young, Assistant Inspector General for Intelligence, ODIG–INTEL.

Dated: October 18, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–21183 Filed 10–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 18, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Revision.
Title: No Child Left Behind—Blue Ribbon Schools Program.
Frequency: One time.
Affected Public: State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 413.
Burden Hours: 16,420.

Abstract: The purpose of the program is to recognize and present as models elementary and secondary schools in the United States with high numbers of students from disadvantaged backgrounds that dramatically improve student performance to a high level on state or nationally-normed assessments and to recognize schools whose students achieve in the top 10 percent on state or nationally-normed assessments.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2862. When you access the information collection, click on ''Download Attachments' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–21204 Filed 10–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Presidential Scholars Program Files and PSAonline Application System (18–06–03)

AGENCY: Office of Communications and Outreach, Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), we publish this notice to amend the system of records entitled ''Presidential Scholars Program Files and PSAonline Application System'' (18–06–03) to reflect the fact that the general support system for the

''PSAonline'' application system has changed from a contractor site to the U.S. Department of Education's Network (EDNet). This change in the host of the online system will increase the security of the information contained in this system of records. More specifically, we are amending the system of records, last published in the **Federal Register** on December 3, 2003 (68 FR 67782), in the following ways: (1) By listing the Office of Chief Information Officer as the central system location. (2) By updating the sections on storage and safeguards to reflect current retention and safety measures. (3) By adding an appendix listing additional system locations.

DATES: The amendments in this notice are effective on October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Apostolides, Office of Communications and Outreach, 400 Maryland Avenue, SW., room 5E119, Washington, DC 20202–8173. Telephone: (202) 205–0512. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the previous paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about individuals that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a notice of new or altered systems of records in the **Federal Register**. Each agency also must submit reports to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government Reform whenever the agency publishes a new system of records or makes a significant change to an established system of records. Minor changes to an established system of records, such as the amendments to the Presidential Scholars Program Files and PSAonline Application System, do not require an agency to prepare a report.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO); toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 18, 2005.

Kevin F. Sullivan,

Assistant Secretary for Communications and Outreach.

For the reasons discussed in the preamble, the Assistant Secretary for the Office of Communications and Outreach of the U.S. Department of Education amends the system of records entitled Presidential Scholars Program Files and PSAonline Application System (18–06–03). The following amendments are made to the notice of an altered system of records published in the **Federal Register** on December 3, 2003 (68 FR 67782–67785):

1. On pages 67782, third column, and 67783, first column, the information under the heading ''SYSTEM LOCATIONS,'' is revised to read as follows:

System Locations

Office of the Chief Information Officer, Regional Office Building 3, 301 7th and D Streets, SW., Washington, DC 20202–8173.

See the Appendix at the end of this notice for additional system locations.

2. On page 67784, third column, make the following changes:

a. Under the heading ''STORAGE,'' the paragraph is revised to read as follows:

Storage

The records are maintained in hard copy filed in lockable standard filing cabinets; on access-controlled personal computers; and in a computer database maintained on the Department of Education's Network (EDNet).

b. Under the heading ''SAFEGUARDS,'' the first paragraph is revised to read as follows:

Safeguards

All physical access to the Department of Education site where this system of records is maintained and the sites of the Department of Education's staff and contractors with access to the system is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

3. On page 67785, at the end of the third column, add a new heading and list three additional system locations as follows:

Appendix to 18–06–03

Additional System Locations

U.S. Presidential Scholars Program, Community Services, Partnerships and Recognition Programs Team, Office of Communications and Outreach, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–8173.

American College Testing, Inc., Recognition Program Services, 301 ACT Drive, Iowa City, Iowa 52243–4030.

Fastek, 1425 60th Street NE., Cedar Rapids, Iowa 52402–1253.

[FR Doc. 05–21149 Filed 10–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–2–000]

Texas Gas Transmission, LLC; Notice of Application

October 12, 2005.

Take notice that on October 4, 2005, Gas Transmission, LLC (Texas Gas), 3800 Fredrica Street, Owensboro, Kentucky, 42301 filed an application in Docket No. CP06–2–000 pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to construct install, and operate a 5,488 HP Solar Centaur 50 gas turbine and associated facilities at Texas Gas's Haughton Compressor Station, located in Bossier Parish, Louisiana. The

purpose of the proposal is to provide redundant compression at the Haughton Compressor Station in order to increase reliability and operational flexibility on Texas Gas's North Louisiana supply lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions concerning this application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, P.O. Box 20008, Owensboro, Kentucky 42304, at (270) 688–6825 or fax (270) 688–5871 or *kathy.d.fort@txgt.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. Unless filing electronically, a party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: November 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5868 Filed 10–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 6, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–1053–016.

Applicants: Maine Public Service Company.

Description: Maine Public Service Co informs the Commission on the status of negotiations re its June 15, 2005 informational filing setting forth the changed open access transmission tariff charges effective June 1, 2005.

Filed Date: October 3, 2005.

Accession Number: 20051006–0083.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER00–744–005; ER00–1712–007; ER00–1703–002; ER02–1327–004.

Applicants: PPL Pennsylvania Companies; PPL Electric Utilities Corp.; PPL EnergyPlus, LLC; PPL University Park, LLC.

Description: PPL Pennsylvania Companies, et al submit a compliance filing pursuant to the Order Conditionally Accepting Updated Market Power Analysis and Tariff Sheets, Commission Order issued September 1, 2005.

Filed Date: October 3, 2005.

Accession Number: 20051006–0089.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER05–1195–002.

Applicants: Silverhill Ltd.

Description: Silverhill Ltd submits amended FERC Electric Tariff Original Volume No. 1 to include language regarding change of status reporting requirements filed July 29, 2005.

Filed Date: October 3, 2005.

Accession Number: 20051006–0086

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER05–1525–000.

Applicants: New England Power Company.

Description: New England Power Co submits amended Large Generator Interconnection Agreements with Dominion Energy Brayton Point, LLC and Dominion Energy Salem Harbor, LLC.

Filed Date: September 30, 2005.

Accession Number: 20051004–0069.

Comment Date: 5 p.m. eastern time on Friday, October 21, 2005.

Docket Numbers: ER05–1533–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits amended rate schedule sheets to Amendment No. 4, Attachment B of the Septemberr 30, 2005 filing Access No. 20051004–0215.

Filed Date: October 3, 2005.

Accession Number: 20051005–0033.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER05–881–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits amended large generator interconnection agreement.

Filed Date: October 3, 2005.

Accession Number: 20051006–0088.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER05–953–002.

Applicants: Phelps Dodge Power Marketing, LLC.

Description: Phelps Dodge Power Marketing, LLC submits Revised Substitute Original Sheet No. 3, to FERC Electric Tariff, Original Volume No. 1, which replaces the filing of September 1, 2005 Accession No. 20050907–0054.

Filed Date: September 27, 2005.

Accession Number: 20050929–0104.

Comment Date: 5 p.m. eastern time on Tuesday, October 18, 2005.

Docket Numbers: ER06–1–000.

Applicants: Leaning Juniper Wind Power, LLC.

Description: Leaning Juniper Wind Power, LLC submits its initial rate schedule, a request for the granting of authorizations & blanket authority, and for waiver of certain requirements.

Filed Date: October 3, 2005.

Accession Number: 20051005–0019.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER06–2–000.

Applicants: American Transmission Systems, Inc.

Description: American Transmission Systems Incorporated submits a Construction Agreement dated July 29, 2002 to establish two new 138kV delivery points with the Toledo Edison Co et al with a proposed effective date of October 3, 2005.

Filed Date: October 3, 2005.

Accession Number: 20051005–0018.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER06–3–000.

Applicants: New England Power Pool.

Description: The New England Power Pool Participants Committee submits signature pages of the New England Power Pool Agreement dated as of September 1, 1971 as amended, executed with BJ Energy LLC and Wheelabrator North Andover, Inc.

Filed Date: October 3, 2005.

Accession Number: 20051005–0021.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER06–4–000.

Applicants: Michigan Electric Transmission Co., LLC.

Description: Michigan Electric Transmission Co LLC submits an Interconnection Facilities Agreement with Wolverine Power Supply Cooperative Inc and requests an effective date of October 4, 2005.

Filed Date: October 3, 2005.

Accession Number: 20051005–0030.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER06–5–000.

Applicants: CBK Group, LTD.

Description: CBK Group, LTD's petition for acceptance of an amended rate schedule, waivers and blanket authority.

Filed Date: October 3, 2005.

Accession Number: 20051005–0029.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER99–3491–006; ER00–2185–004; ER00–2184–004.

Applicants: PPL Montana, LLC; PPL Colstrip I, LLC; PPL Colstrip II, LLC.

Description: PPL Montana, LLC, PPL Colstrip I, LLC, and PPL Colstrip II, LLC submit an updated market power analysis in compliance with Commission's Order issued September 1, 2005.

Filed Date: October 3, 2005.

Accession Number: 20051006–0087.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5852 Filed 10–21–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2005–0027]

[FRL–7987–7]

Board of Scientific Counselors, Land Subcommittee Meetings—Winter 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of four meetings of the Board of Scientific Counselors (BOSC) Land Subcommittee.

DATES: Three conference call meetings will be held on: (1) Thursday, November 17, 2005 from 12 p.m. to 2 p.m., (2) Monday, November 28, 2005 from 12 p.m. to 2 p.m., and (3) Friday, December 9, 2005 from 12 p.m. to 2 p.m. One face-to-face meeting will begin on Tuesday, December 13, 2005 (8 a.m. to 5 p.m.), and conclude on Thursday, December 15, 2005 (8:30 a.m. to 3 p.m.). All times noted are eastern standard time. The meetings may adjourn early if all business is finished. Requests for the draft agendas or for making oral presentations at the conference calls or the face-to-face meeting will be accepted up to 1 business day before each conference call/meeting date.

ADDRESSES: *Conference Calls:* Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in a teleconference meeting may contact Heather Drumm, Designated Federal Officer, via telephone/voice mail at (202) 564–8239, via e-mail at *drumm.heather@epa.gov,* or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by four work days prior to each conference call. *Face-to-Face Meeting:* The meeting will be held at the Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, Ohio 45219.

Document Availability

Any member of the public interested in receiving a draft agenda for, or making a presentation at, one of the conference calls or the face-to-face meeting, may contact Heather Drumm, Designated Federal Officer, via telephone/voice mail at (202) 564–8239, via e-mail at *drumm.heather@epa.gov,* or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

In general, each individual making an oral presentation will be limited to a total of three minutes. The draft agendas can also be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Submitting Comments

Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section. Written comments will be accepted up to 1 business day before the conference calls/meeting dates.

FOR FURTHER INFORMATION CONTACT: Heather Drumm, Designated Federal Officer, via telephone/voice mail at (202) 564–8239, via e-mail at *drumm.heather@epa.gov,* or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

Proposed agenda items for the conference calls include, but are not limited to: Charge questions, objective of program reviews, background on the Office of Research and Development's Land research program, writing assignments, and planning for the face-to-face meeting. Proposed agenda items for the face-to-face meeting include, but are not limited to: Presentations by key EPA staff in the Land research program, poster sessions, writing the draft report, and presentation of the subcommittee's draft responses to the charge questions. The conference calls and face-to-face meeting are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD–2005–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the Board of Scientific Counselors, Land Research Program Subcommittee—Winter 2005 Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *http://www.epa.gov*, select ''Information Sources,'' ''Dockets,'' and ''EDOCKET.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2005–0027. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2005–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. ORD–2005–0027.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD–2005–0027. (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: October 13, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05–21189 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–07]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) has submitted the information collection entitled ''Advances to Housing Associates'' to the Office of Management and Budget (OMB) for review and approval of a 3 year extension of the OMB control number, 3069–0005, which is due to expire on November 30, 2005.

DATES: Interested persons may submit comments on or before November 23, 2005.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington DC 20503.

FOR FURTHER INFORMATION OR COPIES OF THE INFORMATION COLLECTION CONTACT: Jonathan F. Curtis, Examinations Specialist, Office of Supervision, by telephone at 202–408–2866, by electronic mail at *curtisj@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1430b) authorizes the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to certified nonmember mortgagees. The Finance Board refers to nonmember mortgagees as housing associates. In order to be certified as a housing associate, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Part 926 of the Finance Board regulations (12 CFR part 926) implements the statutory eligibility requirements and establishes uniform review criteria an applicant must meet in order to be certified as a housing associate by an FHLBank. More specifically, sections 926.3 and 926.4 (12 CFR 926.3–926.4) implement the statutory eligibility requirements and provide guidance to an applicant on how it may satisfy such requirements. Section 926.5 (12 CFR 926.5) authorizes the FHLBanks to approve or deny all applications for certification as a housing associate, subject to the statutory and regulatory requirements. Section 926.6 (12 CFR 926.6) permits an applicant to appeal an FHLBank decision to deny certification to the Finance Board.

Section 950.17 of the Finance Board regulations (12 CFR 950.17) establishes the terms and conditions under which an FHLBank may make advances to a certified housing associate. Section 950.17 also imposes a continuing obligation on a housing associate to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in sections 926.1 through 926.6 and section 950.17 of the Finance Board regulations (12 CFR 926.1–926.6 and 950.17) is necessary to enable the FHLBanks to determine whether an applicant satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a housing associate eligible to receive FHLBank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule an FHLBank decision to deny housing associate certification to an applicant.

The OMB control number for the information collection, which expires on November 30, 2005, is 3069–0005. The likely respondents include applicants for housing associate certification and current housing associates.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at one, with one response per applicant. The estimate for the average hours per application is 15 hours. The estimate for the annual hour burden for applicants is 15 hours (1 applicant × 1 response per applicant × 15 hours).

The Finance Board estimates the total annual average number of maintenance respondents, that is, certified housing associates, at 63, with 1 response per housing associate. The estimate for the average hours per maintenance response is 1 hour. The estimate for the annual hour burden for certified housing associates is 63 hours (63 certified housing associates × 1 response per associate × 1 hour).

The estimate for the total annual hour burden is 78 hours (63 housing associates × 1 response per associate × 1.0 hours + 1 applicant × 1 response per applicant × 15 hours).

C. Comment Request

In accordance with 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on August 1, 2005. *See* 70 FR 44099 (August 1, 2005). The 60-day comment period closed on September 30, 2005. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the

information collected; and (4) ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

Dated: October 17, 2005.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 05–21148 Filed 10–21–05; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 8, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Alan R. Fairman, DuBois, Pennsylvania, Beverly A. Fairman, Ronald L. Fairman, and Ann W. Fairman, all of Punxsutawney, Pennsylvania, acting as a group in concert, to acquire control of New Mexico Banquest Corporation, parent of First National Bank of Santa Fe, both in Santa Fe, New Mexico.

In connection with this application, Johnny P. Crowley, Glorieta, New Mexico, as trustee of the New Mexico Banquest Corporation Employee Stock Ownership Plan Trust, Santa Fe, New Mexico, to acquire control of New Mexico Banquest Corporation, parent of First National Bank of Santa Fe, both in Santa Fe, New Mexico.

Board of Governors of the Federal Reserve System, October 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5856 Filed 10–21–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. CenterBank Financial, Inc., Northfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of CenterBank and Trust, National Association (in organization), Deerfield, Illinois.

Board of Governors of the Federal Reserve System, October 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5855 Filed 10–21–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Liaison and Scientific Review Office (LSRO); NTP High Throughput Screening Assays Workshop

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Workshop Announcement and Request for Public Comment.

SUMMARY: The NTP has developed and refined a vision for toxicology in the 21st century (''NTP Vision'') and a roadmap for implementing its vision (''NTP Roadmap'') to strategically place the program at the forefront of providing scientific data and its interpretation for use in public health decision-making (see NTP Web site *http://ntp.niehs.nih.gov* select ''NTP Vision and Roadmap''). As part of the NTP Roadmap, the NTP will convene a series of workshops, including the High Throughput Screening Assays Workshop, to discuss test methods and approaches that will enhance the program's ability to efficiently evaluate the large number of substances in our environment for which there is little or no information about their potential hazard for human health. This workshop is scheduled for December 14–15, 2005, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA and will focus on providing information about high throughput screening techniques and the potential utility of this technology for toxicology and the NTP. This meeting is open to the public and attendance is limited only by the space available. Individuals may register to attend the workshop on a first-come, first-served basis per the procedures outlined below. A copy of the agenda and any additional information about the workshop, including background materials and participants, will be posted on the NTP Web site when available (see NTP Web site *http://ntp.niehs.nih.gov* select ''Meetings and Workshops'').

DATES: The workshop will be held on December 14–15, 2005. The workshop will begin each day at 8:30 a.m. and end at approximately 5 p.m. on December 14

and approximately 3 p.m. on December 15.

Comments: Written comments should be received by December 5, 2005, to allow time for adequate review before the workshop (see **FOR FURTHER INFORMATION CONTACT** below). The deadline for registration to present oral comments at the meeting is December 8, 2005.

Registration: Individuals who plan to attend are encouraged to register online at the NTP Web site *http://ntp.niehs.nih.gov/* select ''Meetings and Workshops'' as soon as possible because seating is limited. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 days in advance of the event.

ADDRESSES: The workshop will be held at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Public comments and any other correspondence should be submitted to Dr. Barbara Shane (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–4253, fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov).*

SUPPLEMENTARY INFORMATION:

Background

The High Throughput Screening Assays Workshop will include plenary sessions as well as four simultaneous breakout group sessions for in-depth discussion. Each breakout group will address one of the following topics: (1) The selection of targets and assays for high throughput screening; (2) the conduct of studies including chemical selection, study design, and analytical methods; (3) data storage, analysis, and interpretation; and (4) the application of data from high throughput screening assays in regulatory decision-making. Following the workshop, the NTP will prepare a workshop report and present its proposed strategy to the NTP Board of Scientific Counselors for its consideration and input.

Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments during the plenary session on December 14. Each organization is allowed one speaker during the public comment period. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution and to supplement the record. Written comments received in response to this notice will be posted on the NTP Web site (*http://ntp.niehs.nih.gov* select ''Meetings and Workshops''). Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Dated: October 13, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–21130 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Xiaowu Li, MD, PhD, The University of California at San Francisco: On September 16, 2005, the U.S. Public Health Service (PHS) entered into a Voluntary Exclusion Agreement with the University of California at San Francisco (UCSF) and Xiaowu Li, MD, PhD, former postdoctoral fellow at UCSF. Based on the UCSF report and additional analysis conducted by ORI in its oversight review, PHS found that Dr. Li engaged in scientific misconduct in reporting research supported by grants P01 DE13904, ''Adhesion and proliferation in oral cancer progression,'' R01 DE12856, ''Oral melanoma alpha v beta 3 expression and metastasis,'' and R01 DE011930, ''Regulatory function of fyn in oral SCC invasion,'' all funded by the National Institute of Dental and Craniofacial Research (NIDCR), National Institutes of Health (NIH).

Specifically, PHS found that Dr. Li falsified three images in Figure 5B of a paper, ''Laminin-5 promotes cell motility by regulating the function of the integrin $\alpha 6\beta 1$ in pancreatic cancer,'' published online in *Carcinogenesis Advance Access,* reporting studies on the role of integrin $\alpha 6\beta 1$ and laminin on the invasiveness of pancreatic cancer cells and their ability to metastasize.

In all three images, mouse melanoma cells were falsely represented as being human pancreatic carcinoma cells; the cancer cells were falsely represented as having been plated on medium with laminin-1, whereas they were in fact plated on medium with vitronectin; and for two of the three images, the cancer cells were falsely represented as having been stained with anti-integrin $\beta 1$, whereas they were actually stained with anti-integrin $\beta 3$.

The misconduct was significant because pancreatic cancer has a poor prognosis for patients, since it tends to invade other tissues and to metastasize early in its course. Knowledge of the factors that facilitate cancer cell invasion and metastasis, which was the focus of the questioned figure and paper, is crucial to attempts to develop better treatments for pancreatic and other cancers. Thus, the falsified figure could have misled other investigators in this important area of medical research.

Dr. Li has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed, for a period of three (3) years, beginning on September 16, 2005:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' as defined in the debarment regulations at 45 CFR Part 76; and

(2) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 05–21150 Filed 10–21–05; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Centers for Excellence To Promote a Healthier Workforce, Request for Application OH–05–006

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers for Excellence to Promote a Healthier Workforce, Request for Application OH–05–006.

Times and Dates: 1 p.m.–5 p.m., November 10, 2005 (Closed).

Place: National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE MS E–74, Atlanta, GA 30333 Telephone Number 404.498.2556.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Centers for Excellence to Promote a Healthier Workforce, Request for Application OH–05–006.

Contact Person For More Information: Pamela J. Wilkerson, MPA, Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E–74, Atlanta, GA 30333, Telephone Number 404.498.2556.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 17, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–21177 Filed 10–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), The Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 12:30 p.m.–2 p.m., November 8, 2005.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see ''Supplementary Information'' for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific Counselors, NCEH/ATSDR the Program Peer Review Subcommittee will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

Matters To Be Discussed: Update on Air Pollution and Respiratory Health Branch Peer Review; discuss Community Tribal Subcommittee feedback on peer review questionnaire; discuss process for evaluating peer review questionnaires; discuss selection of subcommittee representation on 2006 peer review workgroups, and review of Action Items from this meeting.

Agenda Items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 12:30 p.m. Eastern Standard Time. To participate in the teleconference, please dial (877) 315–6535 and enter conference code 383520.

Contact Person For More Information: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–21175 Filed 10–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Online Intergovernmental Referral Guide (IRG).

OMB No. 0970–0209.

Description: The IRG is an essential reference maintained by the Office of Child Support Enforcement (OCSE) that provides states with an effective and efficient way of viewing and updating state profile, address, and FIPS code information by consolidating data available through numerous discrete sources into a single centralized, automated repository.

Respondents: State IV–D Child Support Programs, Other Country Child Support Programs.

ANNUAL BURDEN ESTIMATES

Respondent	Number of respondents	Number of responses per respondent	Average urden hours per response	Total burden hours
States and Territories	54	18	.3	292
Foreign Countries and Canadian provinces	23	2	.1	5

Estimated Total Annual Burden Hours: 297.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 17, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–21163 Filed 10–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that, under the authority vested in me by the Secretary of Health and Human Services, I have redelegated to the Commissioner, Administration on Children, Youth and Families, with the authority to further redelegate, the authority to continue the administration of grants and contracts initially awarded in the Fiscal Years 2002, 2003 and 2004 under the Special Projects of Regional and National Significance (SPRANS) Community-based Abstinence Education Program, pursuant to Title V, section 501(a)(2) of the Social Security Act, as amended. The SPRANS Community-based Abstinence Education Program includes Community-based Abstinence Education grants, Abstinence Education Special Congressional Initiative Project grants, and the Abstinence Education Technical Assistance contract with the National Abstinence Clearinghouse. This delegation permits the Commissioner, Administration on Children, Youth and Families, to administer FY 2002, 2003 and FY 2004 SPRANS abstinence education grants under the terms and conditions of the initial awards, thereby allowing the continuation of the existing grants consistent with recent appropriations enactments (Pub. L. 108–477).

This delegation shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations. This delegation excludes the authority to issue reports to Congress, to take final action to withhold funds from States and to act under the nondiscrimination provisions of the Social Security Act.

This delegation also supersedes all prior delegations of authority to the extent that they are inconsistent with the provisions of this delegation.

I hereby ratify any actions taken by the Commission, Administration on Children Youth and Families, or any other Administration on Children, Youth and Families official, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective on the date of signature.

Dated: October 6, 2005.

Wade. F. Horn,

Assistant Secretary for Children & Families.

[FR Doc. 05–21162 Filed 10–21–05; 8:45am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0395]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal meetings with sponsors and applicants for Prescription Drug User Fee Act (PDUFA) products.

DATES: Submit written or electronic comments on the collection of information by December 23, 2005.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical

utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products (OMB Control Number 0910 0429)—Extension

This information collection approval request is for a FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of PDUFA products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (the Modernization Act), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an End of Phase 2 meeting and a Pre NDA meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

A. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an Investigational New Drug Application (IND), New Drug Application (NDA), or Biological License Application (BLA) must be submitted with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires January 31, 2005; and FDA Form 356h, OMB control number 0910–0338, expires September 30, 2008.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2, therefore, requests should be submitted to the agency with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for the following two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes the following:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;
- A list of agency staff requested to be in attendance;
- The approximate date that the information package will be sent to the agency; and
- Suggested dates and times for the meeting.
- This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an End of Phase 2 meeting (§§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a Pre NDA meeting (§ 312.47(b)(2)).

Description of respondents: A sponsor or applicant for a drug or biological product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

Burden Estimate: Provided in the following paragraphs is an estimate of the annual reporting burden for the

submission of meeting requests and information packages under the guidance.

C. Request For a Formal Meeting

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 713 sponsors and applicants (respondents) request approximately 1,783 formal meetings with CDER annually and approximately 164 respondents request approximately 286 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

D. Information Package

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 615 respondents submitted approximately 1,365 information packages to CDER annually and approximately 132 respondents submitted approximately 208 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency.

As stated earlier, the guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning End of Phase 2 meetings and Pre NDA meetings have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval these additional estimates.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Meeting Requests and Information Packages	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
Meeting Requests					
CDER	713	2.50	1,783	10	17,830
CBER	164	1.74	286	10	2,860
Total					20,690
Information Packages					
CDER	615	2.22	1,365	18	24,570
CBER	132	1.58	208	18	3,744
Total					28,314
Grand Total					49,004

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21151 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0220]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and ''Lookback''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 23, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written

comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and ''Lookback'' (OMB Control Number 0910–0116)—Extension

Under the statutory requirements contained in section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. In addition, under the biologics licensing and quarantine provisions in sections 351–361 of the PHS Act (42 U.S.C. 262–264) and the general administrative provisions under sections 501–503, 505–510, and 701–704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351–353, 355–360, and 371–374), FDA has the authority to issue and enforce regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between States or possession or from foreign countries into the States or possession. The current good manufacturing practice (CGMP) and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The ''lookback'' requirements are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion who are at increased risk for transmitting human immunodeficiency virus (HIV) infection. The public health objective in testing human blood donors for evidence of infection due to communicable disease agents and in donor notification is to prevent the transmission of communicable disease.

The information collection requirements in the CGMP, donor testing, donor notification, and ''lookback'' regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enables FDA to conduct meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Under the reporting requirements, § 606.170(b) (21 CFR 606.170(b)) requires that fatal complications of blood collection and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. Section 610.40(c)(1)(ii) (21 CFR 610.40(c)(1)(ii)) requires each dedicated donation be labeled as required under 21 CFR 606.121 and with a label entitled ''INTENDED RECIPIENT INFORMATION LABEL'' containing the name and identifying information of the recipient. Section 610.40(g)(2) requires an establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use prior to completion of testing. Section 610.40(h)(2)(ii)(A) requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of a communicable disease agent(s) or collect from a donor with a record of a reactive screening test. Sections 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) require an establishment to label reactive human blood and blood components with the appropriate screening test results, and, if they are intended for further manufacturing use into injectable products, with a statement indicating the exempted use specifically approved by FDA. Section 610.40(h)(2)(vi) requires each donation of human blood or blood component that tests reactive by a screening test for syphilis and is determined to be a biological false positive be labeled with both test results. Section 610.42(a) (21 CFR 610.42(a)) requires a warning statement, including the identity of the communicable disease agent, on medical devices containing human blood or blood components found to be reactive by a screening test for evidence of infection due to a communicable disease agent(s) or syphilis. Section 610.46(a) (21 CFR 610.46(a)) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive test results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors' repeatedly reactive test. Section 610.47(b) (21 CFR 610.47(b)) requires transfusion services not subject to the Centers for Medicare and Medicaid Services (CMS) regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. Section 630.6(a) (21 CFR 630.6(a)) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41 (21 CFR 610.41), or who has been determined not to be eligible as a donor. Section 630.6(d)(1) requires an establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Under the recordkeeping requirements, § 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOPs) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) (21 CFR 606.110(a)) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for

plasmapheresis of donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported and approved under OMB control number 0910–0338 which expires August 31, 2005. Section 606.151(e) (21 CFR 606.151(e)) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 (21 CFR 606.160) requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.160(b)(1)(ix) requires a facility to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup if the initial notification attempt fails. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup if the initial notification attempt fails. Section 606.165 (21 CFR 606.165) requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 610.40(g)(1) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing.

In addition to the CGMPs in part 606 (21 CFR part 606), there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a)(1), (a)(2), and (f); 640.4(a)(1) and (a)(2); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described in Tables 1 and 2 of this document.

Respondents to this collection of information are licensed and unlicensed blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes inspected by FDA, and other transfusion services inspected by CMS. Based on information received from CBER's database systems, there are approximately 81 licensed Source Plasma collection establishments with multiple locations and 1,628 registered Whole Blood collection establishments for a total of 1,709 establishments. There are approximately 2,156 registered blood establishments inspected by FDA. Of these establishments, approximately 773 perform plateletpheresis and leukopheresis. These establishments annually collect approximately 28 million units of Whole Blood, blood components including Source Plasma, and Source Leukocytes and are required to follow FDA ''lookback'' procedures, and approximately 134 are registered transfusion services that are not subject to CMS's ''lookback'' regulations. Based on CMS records, there are an estimated 4,980 transfusion services approved for Medicare reimbursement.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. Based on information received from industry, we estimate that there are an average of 13 million donations of Source Plasma from approximately 2 million donors and 15 million donations of Whole Blood, including 300,000 (2 percent of 15 million) autologous, from approximately 8 million donors. Assuming each autologous donor makes an average of 2 donations, FDA estimates that there are approximately 150,000 autologous donors.

FDA estimates that approximately 5 percent (12,000) of the 240,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors testing provisions in § 610.40(c)(1)(ii).

Under § 610.40(g)(2) and (h)(2)(ii)(A), the only product currently shipped prior to completion of testing is a licensed product, Source Leukocytes, used in the manufacture of interferon, which requires rapid preparation from blood. Shipments of Source Leukocytes are preapproved under a biologics license application and each shipment does not have to be reported to the agency. Based on information from CBER's database system, FDA receives an estimated 1 application per year from manufacturers of Source Leukocytes.

Under § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), FDA estimates that each manufacturer would ship an estimated 1 human blood or blood component per month (12 per year) that would require two labels; one as reactive for the appropriate screening test under § 610.40(h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under § 610.40(h)(2)(ii)(D). According to CBER's database system, there are an estimated 40 licensed manufacturers that ship known reactive human blood or blood components.

Based on information we received from industry, we estimate that approximately 18,000 donations annually test reactive by a screening test for syphilis, and are determined to be biological false positives by additional testing and labeled accordingly (§ 610.40(h)(2)(vi)).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, e.g., a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for manufacturers to include on the container label a warning statement that identifies the communicable disease agent. In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a statement of warning is required to be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

Based on information received from industry, we estimate that there are approximately 4,424 repeat donors that will test reactive on a screening test for HIV with 159 confirmed positive. We estimate that each repeat donor has donated two previous times and an average of three components were made from each donation. Under § 610.46(a) and (b), this estimate results in 26,544 (4,424 x 2 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 26,544 (4,424 x 2 x 3) notifications to consignees of subsequent test results.

Under § 610.47(b), based also on the information received from industry, we estimate that 80 percent of the 159 (127) confirmed HIV positive were from repeat donors of Whole Blood donations.

Industry estimates that approximately 13 percent of 10 million potential donors (1.3 million donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy

eligibility criteria. It is the usual and customary business practice of 1,709 collecting establishments to notify onsite and to explain the reason why the donor is determined not to be suitable for donating. Based on such available information, we estimate that two-thirds of the 1,709 collecting establishments provided onsite additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only one-third or 570 collection establishments would need to provide, under § 630.6(a), additional information and counseling onsite to the estimated 433,333 (one-third of 1.3 million) ineligible donors.

It is estimated that another 4.5 percent of 10 million donors (450,000 donors) are deferred annually based on test results. We estimate that currently 95 percent of the establishments that collect 98 percent of the blood and blood components notify donors who have reactive test results for HIV, Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), Human T-Lymphotropic Virus (HTLV), and syphilis as usual and customary business practice. Consequently, 5 percent (85) of the industry (1,709) collecting 2 percent (9,000) of the deferred donors (450,000) would notify donor under § 630.6(a).

As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.6(d)(1). However, we estimate that 5 percent of the 1,628 blood collection establishments (81) may not notify the referring physicians of the estimated 2 percent of 150,000 autologous donors with reactive test results (3,000) as their usual and customary business practice.

The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model SOPs developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

Under § 606.160(b)(1)(ix), we estimate the total annual records based on the 1.3 million donors determined not to be eligible to donate and each of the 450,000 (1,300,000 + 450,000 = 1,750,000) donors deferred based on reactive test results for evidence of infection due to communicable disease agents. Under § 606.160(b)(1)(xi), only the 1,628 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 150,000 autologous donors (6,750) will be deferred under § 610.41 and thus result in the notification of their referring physicians.

FDA has concluded that the use of untested or incompletely tested but appropriately documented human blood or blood components in rare medical emergencies should not be prohibited. We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or less occurrence per year. The reporting of test results to the consignee in § 610.40(g) does not create a new burden for respondents because it is the usual and customary business practice or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

The hours per response and hours per record are based on estimates received from industry or FDA experience with similar recordkeeping or reporting requirements.

In the **Federal Register** of June 21, 2005 (70 FR 35680), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b)[2]	82	1	82	20	1,640
610.40(c)(1)(ii)	1,628	8	12,000	0.08	960
610.40(g)(2)	1	1	1	1	1
610.40(h)(2)(ii)(A)	1	1	1	1	1
610.40(h)(2)(ii)(C) and (h)(2)(ii)(D)	40	12	480	0.2	96
610.40(h)(2)(vi)	1,628	11	18,000	0.08	1,440
610.42(a)	1	1	1	1	1
610.46(a)	1,709	16	26,544	0.17	4,512
610.46(b)	1,709	16	26,544	0.17	4,512
610.47(b)	134	1	134	1	134
630.6(a)[3]	570	760	433,333	0.08	34,667
630.6(a)[4]	85	106	9,000	1.5	13,500
630.6(d)(1)	81	37	3,000	1	3,000
Total					64,464

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

[3]Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.
[4]Notification of donors deferred based on reactive test results for evidence of infection due to communicable disease agents.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
606.100(b)[2]	249[5]	1	249	24	5,976
606.100(c)	249[5]	10	2,490	1	2,490
606.110(a)[3]	39[6]	1	39	0.5	20
606.151(e)	249[5]	12	2,988	0.083	248
606.160[4]	249[5]	1,928	480,000	0.75	360,000
606.160(b)(1)(ix)	1,709	1,024	1,750,000	0.05	87,500
606.160(b)(1)(xi)	1,628	4	6,750	0.05	338
606.165	249[5]	1,928	480,000	0.083	39,840
606.170(a)	249[5]	12	2,988	1	2,988
610.40(g)(1)	1,628	1	1,628	0.5	814
Total					500,214

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3]The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4]The recordkeeping requirements in §§ 640.3(a)(2) and (f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b), which address the maintenance of various records are included in the estimate for § 606.160.
[5]Five percent of CMS transfusion services and FDA-registered blood establishments (0.05 X 4,980).
[6]Five percent of plateletpheresis and leukopheresis establishments (0.05 X 773).

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21153 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0283]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by November 23, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles

The generic Animal Drug and Patent Term Registration Act of 1988 permitted generic drug manufacturers to copy those pioneer drug products that were no longer subject to patent or other marketing exclusivity protection. The approval for marketing these generic products is based in part upon a demonstration of bioequivalence between the generic product and pioneer product. This guidance clarifies circumstances under which FDA believes the demonstration of bioequivalence by the stature does not need to be established on the basis of in vivo studies for soluble powder oral dosage form products and Type A medicated articles. The data submitted in support of the waiver request are necessary to validate the waiver decision.

The requirement to establish bioequivalence through in vivo studies (blood level bioequivalence or clinical endpoint bioequivalence) may be waived for soluble powder or Type A medicated articles in either of two

alternative ways. A biowaiver may be granted if it can be shown that the generic soluble powder oral dosage form product or Type A medicated article contains the same active and inactive ingredient(s) and is using the same manufacturing processes as the approved comparator product or article. Alternatively, a biowaiver may be granted without direct comparison to the pioneer product's formulation and manufacturing process if it can be shown that the active pharmaceutical ingredient(s), is the same as the pioneer product, is soluble , and that there are no ingredients in the formulation likely to cause adverse pharmacologic effects. For the purpose of evaluating soluble powder oral dosage form products and Type A medicated articles, solubility can be demonstrated in two ways: ''USP definition'' approach or ''Dosage Adjusted'' approach.

In the **Federal Register** of August 3, 2004 (69 FR 46553), the agency requested comments on this collection of information. In response to that notice, the agency received several comments on the guidance, two from individuals who were generally favorable and one from the Animal Health Institute (AHI), which was supportive of some aspects of the proposed guidance and not supportive of others. None of the comments received took issue with any aspect of the paperwork burden associated with the draft policy. The Center for Veterinary Medicine has revised the substance of the proposed guidance in several respects in response to AHI comments.

The respondents for this collection of information are pharmaceutical companies manufacturing animal drugs. FDA estimates the burden for this collection of information as follows in tables 1 and 2 of this document. The source of the data is records of generic drug applications over the past 10 years.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR WATER SOLUBLE POWDERS[1]

	No. of Respondents	Annual Frequency per Responses	Total Annual Responses	Hours per Response	Total Hours
Same Formulation / Manufacturing Process Approach	1	1	1	5	5
Same API / Solubility Approach	5	5	5	10	50
Total Burden Hours					55

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR TYPE A MEDICATED ARTICLES[1]

	No. of Respondents	Annual Frequency per Responses	Total Annual Responses	Hourse per Response	Total Hours
Same Formulation / Manufacturing Process Approach.	2	2	2	5	10
Same API / Solubility Approach	10	10	10	20	200
Total Burden Hours					210

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21154 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0209]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Food Contact Substances Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 23, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Contact Substances Notification System—21 CFR 170.101 and 170.106—(OMB Control Number 0910–0495)—Extension

Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the act requires that the notification process be used for authorizing the marketing of food contact substances

except where FDA determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the act is necessary to provide adequate assurance of safety or where FDA and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the act requires that a notification include information on the identity and the intended use of the food contact substance and the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) require that a food contact notification (FCN) include FDA Form 3480 entitled ''Notification for New Use of a Food Contact Substance'' and that a notification for a food contact substance formulation include FDA Form 3479 entitled ''Notification for a Food Contact Substance Formulation.'' These forms will serve to summarize pertinent information in the notification. FDA believes that these forms will facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Description of Respondents: Manufacturers of food contact substances.

In the **Federal Register** of June 7, 2005 (70 FR 33180), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Form	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.106[2] (Category A)	5	FDA 3479	1	5	2	10
170.101[3,7] (Category B)	5	FDA 3480	1	5	25	125
170.101[4,7] (Category C)	5	FDA 3480	2	10	120	1,200
170.101[5,7] (Category D)	33	FDA 3480	2	66	150	9,900
170.101[6,7] (Category E)	30	FDA 3480	1	30	150	4,500
Total						15,735

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for food contact substance formulations and food contact articles. These notifications require the submission of FDA form 3479 (''Notification for a Food Contact Substance Formulation'') only.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5] Notifications for uses that are the subject of moderately complex food additive petitions.
[6] Notifications for uses that are the subject of very complex food additive petitions.
[7] These notifications require the submission of FDA Form 3480.

These estimates are based on FDA's experience with the food contact substances notification system.

- Based on input from industry sources, FDA estimates that the agency will receive approximately five notifications annually for food contact substance formulations.
- FDA also has included five expected duplicate submissions in the second row of table 1 of this document. FDA expects that the burden for preparing these notifications primarily will consist of the manufacturer or supplier filling out FDA Form 3480, verifying that a previous notification is effective, and preparing necessary documentation.
- Based on the submissions received, FDA identified three other tiers of FCNs that represent escalating levels of burden required to collect information (the third, fourth and fifth rows of table 1 of this document).
- FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers based on input from industry sources.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21155 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0396]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal dispute resolution for appeals above the division level.

DATES: Submit written or electronic comments on the collection of information by December 23, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level (OMB Control Number 0910–0430)—Extension

This information collection approval request is for an FDA guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue(s) presented. The guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding internal agency review of decisions (21 CFR 10.75), dispute resolution during the investigational new drug (IND) process (21 CFR 312.48), and the new drug application/abbreviated new drug application (NDA/ANDA) process (21 CFR 314.103). In addition, the guidance provides information on how the agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the agency, CDER, and CBER. All agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in parts 312 (OMB control number 0910–0014), 314 (OMB control number 0910–0001), and part 601 (21 CFR part 601) (OMB control number 0910–0338), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requestor in the appeal would facilitate timely resolution of the dispute. The guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

Agency regulations (§§ 312.23(d), 314.50, 314.94, and 601.2) state that information provided to the agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires January 31, 2006; and FDA Form 356h, OMB control number 0910–0338, expires August 31, 2005.

In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted as an amendment in this manner for two reasons: To ensure that each request is kept in the administrative file with the entire underlying application, and to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the appropriate agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined, and the guidance recommends, that the following information should be submitted to the appropriate center with each request for dispute resolution so that the center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (i.e., scientific, procedural, or both), possible solutions based on information in the administrative file, whether informal dispute resolution was sought prior to the formal appeal,

whether advisory committee review is sought, and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last agency official that attempted to formally resolve the matter; (3) a list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The agency suggests submitting the following information with a formal request for dispute resolution: (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA's experience with dispute resolution, the agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

Respondents are expected to be sponsors, applicants, or manufacturers of drug or biological products regulated by the agency under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or section 351 of the Public Health Service Act (42 U.S.C. 262) who request formal resolution of a scientific or procedural dispute.

Provided below is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately eight sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually and approximately one respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 10 requests annually and CBER receives approximately 1 request annually. The hours per response are the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 88 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Requests for Formal Dispute Resolution	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
CDER	8	1.25	10	8	80
CBER	1	1	1	8	8
Total					88

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21156 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0516]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; 2005 Food Safety Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''2005 Food Safety Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 24, 2005 (70 FR 29768), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0345. The approval expires on February 30, 2008.

A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21157 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0216]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the

Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 23, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices: Humanitarian Use Devices—21 CFR Part 814 (OMB Control Number 0910–0332)—Extension

This collection implements the humanitarian use device (HUD) Provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814, subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device do the following: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection will allow FDA to determine whether to do the following: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grants marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making those determinations. Also, this information enables FDA to determine whether the holder of a HUD is in compliance with the HUD requirements.

Description of Respondents: Businesses or others for-profit.

In the **Federal Register** of June 16, 2005 (70 FR 35098), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
814.102	20	1	20	40	800
814.104	8	1	8	320	2,560
814.106	8	2	16	50	800
814.108	20	1	20	80	1,600
814.116(e)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.124(b)	1	1	1	2	2
814.126(b)(1)	35	1	35	120	4,200
Total					9,968

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	35	1	35	2	70

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21158 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

MicroArray Quality Control Project Meeting on MicroArray Quality Control; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''MicroArray Quality Control (MAQC) Project Meeting on MicroArray Quality Control.'' The focus of the 2-day meeting will be to review the datasets generated by the MAQC study.

Date and Time: The meeting will be held on Thursday, December 1, 2005, from 8 a.m. to 5 p.m. and Friday, December 2, 2005, from 8 a.m. to 2 p.m.

Location: The meeting will be held at the Crowne Plaza Cabana Portofino Room on December 1, 2005, and the St. Tropez Room on December 2, 2005, 4290 El Camino Real, Palo Alto, CA 94306, 650–857–0787, FAX: 650–496–1939, Web site: *http://www.cppaloalto.crowneplaza.com/*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Contact: Leming Shi, National Center for Toxicological Research, Food and Drug Administration, 3900 NCTR Rd., Jefferson, AR 72079, 870–543–7387, FAX: 870–543–7686, e-mail: *leming.shi@fda.hhs.gov*.

Registration: There will be no registration fee for attending the meeting. However, interested parties should send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person (see *Contact*) at least 15 days in advance of the meeting. Participants are responsible for their own costs of travel, lodging, and meals.

FDA welcomes the attendance of the public at this meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jeannette Coleman at 870–543–7087, e-mail: *jeanette.coleman@fda.hhs.gov*, at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION: FDA's critical path initiative (*http://www.fda.gov/oc/initiatives/criticalpath/*) identifies pharmacogenomics as a key opportunity in advancing medical product development and personalized medicine. FDA issued the ''Guidance for Industry: Pharmacogenomic Data Submissions'' (*http://www.fda.gov/cder/guidance/6400fnl.pdf*) to facilitate scientific progress in the field of pharmacogenomics and to facilitate the use of pharmacogenomic data in drug development and medical diagnostics. A microarray is a tool for analyzing gene expression that consists of a small membrane or glass slide containing samples of many genes arranged in a regular pattern. Microarrays represent a core technology in pharmacogenomics; however, before this technology can successfully and reliably be applied in clinical practice and regulatory decisionmaking, standards and quality measures need to be developed.

The MAQC project involves six FDA centers, major providers of microarray platforms and ribonucleic acid (RNA) samples, government agencies, academic laboratories, and other stakeholders. The MAQC project aims to evaluate quality control metrics and thresholds for objectively assessing the performance achievable by various microarray platforms, and evaluating the advantages and disadvantages of various data analysis methods. Two RNA samples will be selected for three species (i.e., human, rat, and mouse), and differential gene expression levels between the two samples will be calibrated with microarrays and other technologies (e.g., quantitative real time-polymerase chain reaction (qRT–PCR)). The resulting microarray datasets will be used for assessing the precision and crossplatform/laboratory comparability of microarrays, and the qRT–PCR datasets will enable evaluation of the nature and magnitude of any systematic biases that may exist between microarrays and qRT–PCR. The availability of the calibrated RNA samples and the resulting microarray and qRT–PCR datasets, which will be made readily accessible to the microarray community, will allow individual laboratories to identify and correct procedural failures more easily. The MAQC project will help improve the microarray technology and foster its proper applications in discovery, development and review of FDA-regulated products. For more information about the MAQC project, please visit *http://www.fda.gov/nctr/science/centers/toxicoinformatics/maqc/*.

At the public meeting, each participating platform provider will give a 15-minute presentation to summarize the datasets generated by its test sites and to describe its analysis results. Each analysis site will also give a 15-minute presentation on its analysis results. Other interested parties may present data, information, or views, orally or in writing, on issues related to microarray quality control and data analysis. Those desiring to make formal oral presentations should notify the contact person (see *Contact*) before November 4, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present with an indication of the approximate time requested to make the presentation.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21152 Filed 10–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Injuries Among Youth With Developmental Disabilities

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Injuries Among Youth with Developmental Disabilities. *Type of Information Collection Request:* New. *Use of Information:* The proposed study seeks (1) to determine if children with disabilities are at increased risk of injury compared to typically developing children, and (2) to identify which injuries children with developmental disabilities are at particular risk of sustaining. Existing data on this topic are scarce and equivocal. Results will help inform prevention efforts. NICHD proposes to collect information about disabilities among children with injuries through phone interviews with

parents/guardians of children who were seen in an emergency department for an injury. This information will be collected in conjunction with the Consumer Product Safety Commission's (CPSC's) National Electronic Injury Surveillance System (NEISS). The NEISS is part of CPSC's routine data collection. Through this system, trained abstractors code information from all injury-related emergency department visits in the participating hospital. Additional information will be collected through ''follow-back'' phone interviews with parents/guardians of injured children seen in participating hospitals. NICHD will collect information on developmental disabilities among injured children e.g., cerebral palsy, blindness, deafness or trouble hearing, autism, and mental retardation), medical/psychological conditions e.g. epilepsy/seizures, ADHD), medication use, and other potential risk factors for injury including family structure, sibling characteristics, and caregiver supervision practices. Finally, NICHD would like to determine if typically developing children who have a sibling with a developmental disability, who may compete for supervisory time, are at a greater risk of injury than other children. This Interagency Agreement provides funds from NICHD to CPSC to complete 8000 telephone interviews with parents/guardians of injured children. The sample of interviewees will be derived from a larger sample of children who will be systematically selected from the NEISS system. Sampling will cover an entire year to account for seasonal variations in injury rates. Two thousand interviews will be conducted in 4 different age groups: 0–4 years, 5–9 years, 10–14 years, and 15–19 years. Intentional injuries will not be included in the sampling pool. Further, deaths and hospitalizations will be excluded. Interviews will be limited to those who can complete an interview in English or Spanish. *Frequency of Response:* One interview; *Affected Public:* Individuals or households; *Type of Respondents:* Parents or Guardians; The annual reporting burden is as follows: *Estimated Number of Respondents:* 8000. *Estimated Number of Responses per Respondent:* 1; Average Burden Hours Per Response 0.33; and *Estimated Total Annual Burden Hours Requested:* 2640. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Type of respondents	Estimated numbers of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Parents/guardians	8000	1	.33	2640

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Gitanjali Saluja, Ph.D., 6100 Executive Blvd. Suite 7B03, Rockville, MD 20852. Phone: 301–435–6917. E-mail: *salujag@mail.nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 13, 2005.

Paul L. Johnson,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 05–21116 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

NIH3T3 Cell Lines Carrying c-Met Mutations Including G3906A, G3522A, G3810T, T3936C, T3936G, T3997C, C3528T, C3564G, C3831G, A3529T, and T3640C

Laura S. Schmidt (NCI).

HHS Reference No. E–327–2005/0—Research Tool.

Licensing Contact: John Stansberry; 301/435–5236: *stansbej@mail.nih.gov*.

MET is over expressed in a variety of cancers including hereditary papillary renal cell carcinoma and non-small cell lung cancer. These cell lines carry naturally-occurring Met mutations and were derived from the germline of patients with hereditary papillary renal cell carcinoma. These cell lines can be used as drug discovery research reagents.

These cell lines were described in part in Schmidt et al., ''Novel mutations of the MET proto-oncogene in papillary renal carcinomas. Oncogene. (1999) 18:2343–2350 and Jeffers et al., ''Activating mutations for the met tyrosine kinase receptor in human cancer.'' PNAS (1997) 94:11445–11450.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Mouse Fibroblasts Stably Expressing C-Type Lectin Receptors DC–SIGN and L–SIGN

Vineet N. KewelRamani and Thomas Martin (NCI).
HHS Reference Nos. E–321–2005/0 and E–322–2005/0—Research Tools.
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*.

The NIH is pleased to offer for licensing mouse fibroblasts that stably express the C-type lectin receptors DC–SIGN and L–SIGN (CD209 and CD209L, respectively). L–SIGN and DC–SIGN both exhibit selectivity for highly mannosylated glycoproteins. DC–SIGN is also selective for certain Lewis X sugar groups. These types of interactions allow L–SIGN and DC–SIGN to interact with a wide spectrum of pathogens including HIV, hepatitis C virus, and SARS coronavirus, which appear to use L–SIGN and DC–SIGN to facilitate their replication. In addition to HIV, HCV, and SARS, pathogens such as Ebola virus, some herpes viruses, and tuberculosis interact with DC–SIGN. In contrast to primary cells expressing L–SIGN and DC–SIGN, the subject fibroblasts are resilient, adhere to coated tissue culture plates, grow rapidly and continually express high levels of their respective receptor. The subject materials could be used to study the interaction of pathogens with L–SIGN or DC–SIGN and to screen for compounds that block these interactions. Additionally, the materials could be used for the development of antibodies or compounds through rational design that interacted with L–SIGN or DC–SIGN. The NIH3T3/DC–SIGN and NIH3T3/L–SIGN cells are further described in Journal of Virology, 2002, vol. 26(12), pages 5905–5914. The subject technologies are available for licensing from the NIH through biological materials license agreements.

Murine Mast Cell Line Useful for Toxicity and Immunopotency Screens

Michael Potter (NCI).
HHS Reference No. E–274–2005/0—Research Tool.
Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov*.

The technology is a mouse cell line (P815) that could be useful for screening biological and chemical agents for toxicity and immunopotency. Specifically, the cell line is useful for screening for toxic effects of immunopotentiators including Mycobacterium bovis, Bacillus Calmette-Gurerin strain, zymosan, lipopolysaccharide and dextran sulfate. The cell line may also have application in screening other compounds.

The cell line may also prove useful for studies of cancer and tumor immunology as injection of mice with P815 leads to progressive tumors. The P815 tumors express cell surface antigens that could provide a model for cancer vaccine development.

Mutated Pseudomonas Exotoxins with Reduced Antigenicity

Ira H. Pastan *et al.* (NCI).
U.S. Provisional Patent Application filed 29 Jul 2005 (HHS Reference No. E–262–2005/0–US–01).
Licensing Contact: Jesse S. Kindra; 301–435–5559; *kindraj@mail.nih.gov*.

The use of *Pseudomonas* exotoxins (PE) for treatment of solid tumors, in particular, has been limited because of the development of neutralizing antibodies to the immunotoxin after the first administration. These antibodies develop before most protocols would call for a second administration of the immunotoxin, and therefore render further use of the immunotoxins ineffective against solid tumors in previously exposed patients.

The studies underlying this novel invention reveal that the predominant immune response of patients to PE-immunotoxins is the PE portion of the immunotoxin. This finding indicates that reducing the antigenicity of the PE molecules used for immunotoxins would reduce the overall antigenicity of the immunotoxin, and increase their utility.

Therefore, this invention relates to mutated *Pseudomonas* exotoxins (PE) that have reduced antigenicity compared to PEs containing the native sequence. The PEs of this invention have one or more individual mutations that reduce antibody binding to one or more epitopes of PE.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods and Materials for Identifying Polymorphic Variants, Diagnosing Susceptibilities, and Treating Disease

Lawrence C. Brody (NHGRI) *et al.*
PCT Application No. PCT/US05/21288 filed 16 Jun 2005 (HHS Reference No. E–149–2005/0–PCT–01).
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov*.

This invention relates to materials and methods associated with polymorphic variants in two enzymes involved in folate-dependent and one-carbon metabolic pathways important in pregnancy-related complications and neural tube birth defects: MTHFD1 (5,10-methylenetrahydrofolate dehydrogenase, 5,10-methenyltetrahydrofolate cyclohydrolase, 10-formyltetrahydrofolate synthase) and methylenetetrahydrofolate dehydrogenase (NADP+ dependent) 1-like (MTHFD1L). These enzymes are extremely important in the promotion of DNA synthesis, a process that is critical for normal placental and fetal development.

Recently, the inventors have discovered that a MTHFD1 polymorphism is also a strong maternal genetic risk factor for placental abruption, premature separation of a normally implanted placenta. This polymorphism may also be a risk factor for first and second trimester miscarriages. Diagnostic and therapeutic methods are provided in this invention involving the correlation of polymorphic variants in MTHFD1 and other genes with relative susceptibility for various pregnancy-related and other complications such as cancer, cardiovascular disease, and developmental anomalies. Both nutrient status and genetic background are independent yet interacting risk factors for impaired folate metabolism. However, the mechanisms that lead to pathology or the mechanisms whereby folate prevents these disorders are unknown. Therefore, a diagnostic and therapeutic invention of this kind would significantly improve the detection and treatment of disorders associated with folate metabolism.

For further information, see Brody *et al.*, July 28, 2005, ''A polymorphism in the *MTHFD1* gene increases a mother's risk of having an unexplained second trimester pregnancy loss,'' Mol. Hum. Reprod. 10.1093/molehr/gah204.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

AAV5 Vector and Uses Thereof

John A. Chiorini, Robert M. Kotin (NHLBI).
U.S. Provisional Application No. 60/087,029 filed 28 May 1998 (HHS Reference No. E–127–1998/0–US–01).
U.S. Patent Application No. 09/717,789 filed 21 Nov 2000 (HHS Reference No. E–127–1998/0–US–07).
U.S. Patent Application Serial No. 11/184,380 filed 19 Jul 2005 (HHS Reference No. E–127–1998/0–US–08).
Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov*.

The invention described and claimed in this patent application provides for novel vectors and viral particles which

comprise adeno-associated virus serotype 5 (AAV5). AAV5 is a single-stranded DNA virus of either plus or minus polarity which, like other AAV serotypes (e.g., AAV4, AAV2) requires a helper virus for replication. AAV type 2 has the interesting and potentially useful ability to integrate into human chromosome 19 q 13.3-q ter. This activity is dependent on the non-structural, Rep, proteins of AAV2. The Rep proteins of AAV types 2 and 5 are dissimilar and are not able to substitute in DNA replication of the heterologous serotype.

AAV5 offers several advantages which make it attractive for use in gene therapy: 1. Increased production (10–50 fold greater than AAV2); 2. distinct integration locus when compared to AAV2; 3. Rep protein and ITR regions do not complement other AAV serotypes; and 4. appears to utilize different cell surface attachment molecules than those of AAV type 2.

In addition to licensing, the technology may be available for further development through collaborative research opportunities with the inventors.

The Use of Nitroxides in the Prophylactic and Therapeutic Treatment of Cancer Due to Genetic Defects

James Mitchell, Angelo Russo, Anne Deluca and Murali Cherukuri (NCI).

U.S. Patent Application No. 09/424,519 filed 03 Mar 2000, claiming priority to 27 May 1997 (HHS Reference No. E–167–1997/0–US–07).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The invention is a method for preventing or treating cancer, especially cancers associated with defects in the p53 gene. This gene is generally considered to be a tumor-suppressor gene, and in a large percentage of malignancies including pancreatic, colon, lung, and breast, the gene is found to be inactive in the cancer. It is believed that many individuals have genetic defects in p53 predisposing them to cancer.

The invention involves the use of certain nitroxides as agents to slow the appearance or progression of tumors associated with p53 knockout. Thus, these compounds could serve as preventative agents for people predisposed to cancer, or as therapeutic agents for certain cancers. As nitroxides have already been identified as antioxidants, such agents could become part of a cancer prevention and anti-aging regimen. A new method of use for these compounds now include their use in imaging, which correlates functional information about the tumor with magnetic resonance imaging data.

Dated: October 13, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–21118 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel PAR–04–020: Small Grants for Behavioral Research in Cancer Control

Date: November 9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washington Boulevard, Gaithersburg, MD 20878

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21124 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Large-Scale Genotyping of NHLBI Cohorts

Date: October 20, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie L Prenger, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892–7924, 301–435–0270, *prengerv@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

October 24, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21133 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel. Institutional National Research Service Award Predoctoral.

Date: November 9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C Craig Hyde, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN18, Bethesda, MD 20892, 301–435–3825, *ch2v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88 Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21121 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 1–2, 2005.

Time: December 1, 2005, 8 a.m. to 5 p.m.

Agenda: NICHD Director's Report presentation, Regional Research Networks, and an update on the Rehabilitation Medicine Scientist Training Program.

Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Time: December 2, 2005, 8 a.m. to 5 p.m.

Agenda: Other business dealing with the NABMRR Board.

Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ralph M Nitkin, PhD, Director, BSCD, National Center for Medical, Rehabilitation Research, National Institute of Child Health, and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/ncmrr.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21122 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Child Health And Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel NIH/NRS Institutional Research Training Grants.

Date: November 10, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Kishena C. Wadhwani, Ph.D., MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21123 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee A

Date: November 8, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21125 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee B

Date: November 8–9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21126 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Reproduction, Andrology, and Gynecology Subcommittee.

Date: November 8–9, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21127 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Research Career Development Award

Date: November 9, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006

Contact Person: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485 *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21128 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–13, Review R01

Date: November 10, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–03, Review PAR–04–091, R03s

Date: November 16, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–08, Review R21s (Pain)

Date: November 29, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–29, Review PAR–04–091, R03s

Date: December 5, 2005.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, Ph.D., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm. 4AN–32F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–09, Review R21s (Health Care)

Date: December 7, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–10, Review R21s (Cranio)

Date: December 8, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_ hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–23, Review RFA DE06–001, Protein Profiles Oral Tissue HIV/AID

Date: December 8, 2005.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 593–4861, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21129 Filed 10–21–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Hyperaccelerated Award/Mechanisms in Immunomodulation Trials (November, 2005)

Date: November 1, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, 3256, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mercy R. PrabhuDas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21131 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Institutional National Research Service Award (T32) and NRSA Short-Term Research Training (T35)

Date: November 15, 2005

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 90.115, Biometry and Risk Estimation-Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response in Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; National Institutes of Health, HHS)

Dated: October 14, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21132 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Town Hall Meeting on Ruth L. Kirschstein National Research Service Award (NRSA) Tuition, Fees and Health Insurance Policies

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the National Institutes of Health (NIH) will hold a Town Hall meeting to hear comments and insights concerning possible revisions to certain fiscal policies that govern the Ruth L. Kirschstein National Research Service Awards (NRSA), which comprise institutional training grants (T32 and T34s) and individual fellowships (F30, F31, F32, F33). The meeting which is open to the public will focus primarily on the funding of educational costs such as tuition, fees and health insurance provided through institutional training grants. The meeting will be held November 30, 2005 in the Natcher Conference Center, Room E1/E2 on the NIH campus in Bethesda, Maryland.

Background: NRSA programs currently support over 17,000 predoctoral and postdoctoral research training positions mostly in the nation's academic laboratories. While the budget for the NRSA programs grew smartly during the five years in which the overall appropriation for the NIH was doubled, since fiscal 2003, the last of the growth years, the appropriation for NRSA training programs has grown rather modestly. Given this reality, the NIH must re-examine aspects of its NRSA policies that may not be sustainable in a period of limited budget expansion.

The largest of the NRSA programs funds institutional training grants that use the T32 mechanism to support both pre- and post-doctoral research training. Currently, the direct cost funding of these programs is segmented into four categories: stipend, tuition/fees/health insurance (referred to collectively as tuition), travel, and training related expenses. The funding levels for three of these (stipend, travel, and training related expenses) are stipulated and controlled by NIH, although each can be adjusted as fiscal circumstances and program needs evolve. The funding for tuition, on the other hand, is not fully controlled by NIH; the funding for tuition is governed by a formula tied to the amount each institution requests for this expense. The formula provides for each T32 trainee the sum of $3,000 plus sixty percent of the requested tuition in excess of $3,000. This formula is used to determine the tuition level provided via each competing grant; that level, once established for a given competing grant, is used for the subsequent non-competing renewal awards during the project period. This formula has been employed since fiscal 1996 and has been modified once.

During the five year growth period, the increased funding devoted to NRSA activities was used for meaningful, and long overdue, trainee stipend increases and for covering some of the escalating requests in the tuition category of training grants. However, in fiscal 2004 and 2005, when there was limited NRSA budget growth, the requests and outlays for tuition continued to rise substantially. Barring other adjustments, the continuation of this trend in tuition growth will result in a significant annual decrease in the number of NRSA trainee positions, and to fewer programs supported by T32 training grants. Since these outcomes could have a substantial disruptive effect on biomedical research training, NIH has frozen the tuition expenses on competing renewals of T32 awards in fiscal 2006. (See *http://grants.nih.gov/grants/guide/notice-files/NOT-OD–05–059.html*) Moreover, NIH training officials have decided to study various options for handling the funding of trainee tuition in the future. The goal of this effort is to find an approach that equips the agency both to adjust to budgetary challenges and to continue to provide appropriate support to institutions to help defray the educational costs of NRSA trainees. This town hall meeting is being held to gather the views of the training community on this issue.

Among the options that will be studied are the following:

1. The current tuition formula could be applied in conjunction with a ceiling; the funds provided would be the amount dictated by the currently-used formula or the amount dictated by the ceiling, whichever is less. The magnitude of the ceiling would be based on the fiscal resources available as well as on applicable data. For the sake of discussion, those offering comments may assume the ceiling could be in the range of $16,000 to $18,000.

2. A fixed allowance could be provided for tuition; the same allowance per trainee would be provided to each

grantee institution. This approach is employed by the National Science Foundation for its graduate research fellowship program. For the sake of discussion, those offering comments may assume the allowance could be in the range of $16,000 to $18,000. The allowance could be adjusted periodically by the NIH as fiscal circumstances warranted.

3. The current tuition formula could be retained without modification. Those offering comments may assume that under this option the number of NRSA trainees and funded training grant programs will likely experience a series of year-to-year decreases as long as the current fiscal patterns prevail.

Participation: Those who wish to attend the Town Hall meeting are invited to submit a brief statement, not to exceed two pages, summarizing views and experiences relevant to the topic of the meeting. Some of those submitting statements will be asked to make brief oral presentations at the meeting. In selecting those to make presentations and in allocating time, the organizers hope to ensure that a full range of opinions is heard and that all parts of the NRSA constituency are represented. Those not asked to present will be welcome at the meeting and will be given a brief opportunity to contribute during two ''open mike'' sessions. Individuals should submit their statements along with their name, affiliation, and contact information to *NRSATownHall@mail.nih.gov* by November 4, 2005. Individuals chosen to make presentations at the Town Hall meeting will be notified on or around November 14, 2005. Those unable to attend but who wish to provide statements are welcome to do so. All statements will be considered by NIH staff. Those who do not submit statements but wish to observe the meeting will be admitted on a space-available basis. An NIH official will present background information on NRSA tuition support at the outset of the meeting.

All individuals who wish to attend the meeting should register through the Town Hall meeting's Web site at *http://pub.nigms.nih.gov/nrsameeting*, available on or about October 24, 2005. The detailed schedule for the meeting, when completed, will be posted on this Web site along with any meeting updates. Participants are responsible for their own expenses associated with participating in this meeting, such as for travel.

Inquiries: Questions concerning this notice should be directed to: Dr. Warren Jones, National Institute of General Medical Sciences, National Institutes of Health, 301–594–3827, *jonesw@nigms.nih.gov.*

Dated: October 13, 2005.

Norka Ruiz Bravo,

Deputy Director for Extramural Research, National Institutes of Health.

[FR Doc. 05–21134 Filed 10–21–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0041]

Notice of Meeting of Homeland Security Science and Technology Advisory Committee

AGENCY: Office of Studies and Analysis, Science and Technology Directorate, DHS.

ACTION: Notice.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet at 3811 N. Fairfax Drive, 6th Floor Conference Room, Arlington, Virginia 22209, in closed session on November 8, 2005, from 7:30 a.m. to 4 p.m. and from 4 p.m. to 5:30 p.m. in open session.

DATE: The meeting date is November 8, 2005.

ADDRESSES: If you wish to submit comments, you must do so by November 4, 2005. Comments must be identified by DHS–2005–0041 and may be submitted by *one* of the following methods:

- Federal Partner EDOCKET Web Site: *http://www.regulations.gov*. Follow instructions for submitting comments on the Web site.
- E-mail: *HSSTAC@dhs.gov*. Include docket number in the subject line of the message.
- Fax: (202) 254–6177.
- Mail: Ms. Brenda Leckey, Office of Studies and Analysis, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Leckey, Office of Studies and Analysis, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528, *HSSTAC@dhs.gov*, 202–254–5041.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The HSSTAC will meet for purposes of: (1) Reviewing Homeland Security Institute (HSI) work on risk-based strategic planning; (2) receiving subcommittee reports; (3) providing the Under Secretary with preliminary HSSTAC recommendations; (4) addressing future subcommittee activities; and (5) discussing the Annual Report to Congress and the Under Secretary. Specifically, the HSSTAC will review the results of its subcommittees' activities undertaken since the last quarterly meeting in August 2005, and discuss any proposed subcommittee recommendations to be included in the annual report to Congress. The Committee will receive a briefing from the HSI on the status of the framework under development to link DHS and S&T investments to national homeland security strategies. And lastly, the Committee will discuss areas of interest for future subcommittee activities, and dispense subcommittee assignments for the annual report to Congress due in January.

Public Attendance: Due to meeting space restrictions, the maximum number of public attendees will be 25. Members of the public will be registered to attend the public session on a first-come, first-served basis per the procedures that follow. Any member of the public who wishes to attend the public session must provide his or her name, affiliation, social security number, and date of birth no later than 5 p.m. e.s.t., Friday, November 4, 2005. Please provide the required information to Craig Wilson via e-mail at *HSSTAC@dhs.gov*, or via phone at (202) 254–5723. Persons with disabilities who require special assistance should indicate so in their admittance request. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 4 p.m. on November 8, 2005.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 1 *et seq.*) and pursuant to the authority delegated to him by the Secretary in DHS Management Directive 2300, the Under Secretary for Science and Technology has determined that this HSSTAC meeting will address matters the disclosure of which would be likely to frustrate significantly proposed agency actions. Accordingly, consistent with the provisions of 5 U.S.C. 552b(c)(9)(B), the meeting will be partially closed to the public.

Dated: October 19, 2005.

Charles E. McQueary,

Under Secretary for Science and Technology Science and Technology Directorate.

[FR Doc. 05–21308 Filed 10–21–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): Creation of Non-Portal Accounts for Importers; Automatic ACE Participation for C–TPAT Members

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces the creation of Non-portal Accounts for importers wishing to participate in the Automated Commercial Environment (ACE) test, but not seeking the benefits that inure to parties that establish Portal Accounts. This notice also announces that all importers who are certified partners in the voluntary Customs–Trade Partnership Against Terrorism (C–TPAT) Program, and are not holders of ACE Portal Accounts, are automatically established as ACE Non-portal Accounts and are eligible to participate in the Periodic Monthly Statement test. This Notice further announces that importers who are not certified partners in C–TPAT may still become Non-portal Accounts by accurately completing a Customs and Border Protection Form (CBP Form) 5106 and then submitting that document to a customs broker who is participating in ACE via a Portal Account. The broker will then submit that information to CBP. Finally, the document states that any current C–TPAT certified partners who are owners of Portal Accounts and are not participating in Periodic Monthly Statement (PMS) may immediately participate in PMS directly with CBP, or through a customs broker with an ACE Portal Account, by providing to CBP those importer of record numbers that are part of the Portal Account and that have been previously designated to C–TPAT.

DATES: The provisions of this Notice are effective immediately.

ADDRESSES: Comments concerning this notice should be submitted to Mr. Michael Maricich via e-mail at *Michael.Maricich@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: For questions regarding this Notice: Mr. Michael Maricich via e-mail at *Michael.Maricich@dhs.gov*, or by telephone at (703) 921–7520. Information is also available at the CBP Web site, cbp.gov, regarding the procedures to follow in order to establish the accounts described in this notice, such as the submission of forms, information, etc.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2002, CBP published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment. In this notice, CBP stated that it planned to select approximately forty importer accounts from the list of qualified applicants for the initial deployment of this test. The test would allow importers and authorized parties to access their customs data via a web based Account Portal. In order to be eligible for participation, an importer was required to become a member of the Customs–Trade Partnership Against Terrorism (C–TPAT) Program and had to have the ability to connect to the internet. Each participant had to designate one person as the account owner for the company's portal account information, with that account owner being responsible for safeguarding the company's portal account information, controlling all disclosures of that information to authorized persons, authorizing user access to the Account Portal and ensuring that access to the company's portal account information by authorized persons is strictly controlled. Each importer wishing to participate was required to fill out an application and, while not expressly stated in the Notice, each applicant was also required to agree to a set of terms and conditions.

On June 18, 2002, CBP extended the application period for those desiring to be one of the initial importer participants by publishing a second General Notice in the **Federal Register** (67 FR 41572). That notice emphasized that applications to be an initial participant had to be submitted to CBP prior to August 1, 2002. Applications would be accepted after that date, but parties who so applied would be placed on a waiting list and considered for participation pending expansion of the technology.

On February 4, 2004, CBP published a General Notice in the **Federal Register** (69 FR 5362) announcing the next step toward the full electronic processing of commercial importations in ACE, with a focus on identifying authorized importers and brokers to participate in the test to implement the Periodic Monthly Statement (PMS) Process. Under the test as described in this Notice, participating importers and their designated brokers are allowed to deposit estimated duties and fees no later than the 15th calendar day of the month following the month in which the goods are either entered or released, whichever comes first. (See section 383 of the Trade Act of 2002, Pub. L. 107–210, dated August 6, 2002, which amended section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)). Brokers are permitted to establish broker accounts in the secure data portal in order to submit Periodic Monthly Statements on behalf of their clients eligible to participate.

The February 4, 2004, General Notice further stated that participants in this test would benefit by having access to operational data through the ACE Secure Data Portal (''Portal''), enjoying the capability of being able to interact electronically with CBP, and making payments of duties and fees on a periodic monthly basis. Pursuant to this Notice, an importer wishing to designate a broker to make Periodic Monthly Statement payment on his behalf can do so only after first establishing himself as an importer ACE Portal account by meeting the basic criteria set forth in the **Federal Register** notices of May 1, 2002 (67 FR 21800) plus two new additional requirements, i.e., having the ability to make periodic payment via ACH Credit or ACH Debit and having the ability to file entry/entry summary via ABI (Automated Broker Interface). Also, designated brokers wishing to participate in this test and make Periodic Monthly Statement payment on behalf of participating importers also had to establish individual broker ACE Portal Accounts, also meeting those same requirements. In addition, in order for customs brokers to apply, they had to provide names of the initial forty-one importers participating in the test who had designated or would designate them as the authorized broker.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302), reminding the public that importers and their designated brokers may still apply to establish ACE Portal accounts so as to participate in the Periodic Monthly Statement Process. The Notice again invited customs brokers to participate in the ACE Portal test generally.

On February 1, 2005, CBP published a General Notice in the **Federal Register** (70 FR 5199) modifying the eligibility

requirements for the establishment of an ACE portal account and announced that applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any test, were no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C-TPAT).

On August 8, 2005, CBP published a General Notice in the **Federal Register** (70 FR 45736) changing the time period allowed for the deposit of the duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. That change was made in order to comply with the provisions of section 2004 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, which extended the time of deposit of those estimated duties and fees. The document also advised that entries containing Census errors are eligible to be placed on a Periodic Daily Statement and designated for monthly payment. Finally, the document described those situations where liquidated damages would be imposed for failing to pay estimated duties in a timely manner.

On September 22, 2005, CBP published a General Notice in the **Federal Register** (70 FR 55632) eliminating the requirement that participants in the Periodic Monthly statement test provide a bond rider covering the periodic payment of estimated duties and fees. The Notice indicated that nonpayment or untimely payment of estimated duties and fees may result in action by CBP to impose sanctions on the delinquent importer of record or to allow the surety to terminate its basic importation bond. If the bond principal is a participant in the Periodic Monthly Statement test, sureties will be allowed, under certain conditions, to terminate bonds with 3 business days notice to the bond principal and CBP.

Description of Changes

Removal of Requirement for Participation in Periodic Monthly Statement

In order to encourage maximum participation, CBP will no longer require that importers first establish ACE Portal Accounts in order to deposit estimated duties and fees as part of Periodic Monthly Statement (PMS). Previous releases of ACE involved testing the ability of importers and authorized parties to access their CBP data via the Portal, with a focus on defining and establishing the Importer Account structure. Among other things, the requirement to establish an ACE Portal Account was considered a benefit to participants because it provides them with access to their operational data through the ACE Portal.

CBP recognizes that some importers, while wishing to deposit estimated duties and fees on a monthly basis, would prefer to designate a broker to perform this role, and may choose not to access their data via the Portal. As such, CBP has decided that in lieu of the requirement to establish an importer ACE Portal account prior to participation in periodic monthly payment, CBP will only require an importer to establish a Non-portal Account.

Non-Portal Accounts

Through this Notice, CBP announces the establishment of Non-portal Accounts in ACE. At this point during the ACE test, Non-portal Accounts will only be afforded to importers.

Importers desiring to participate in ACE through Non-portal Accounts will not be required to meet the application requirements outlined to date, but will be required to provide information related to identity (unless they are C–TPAT certified partners, automatically becoming ACE Non-portal Accounts, as described later in this document). Importers establishing Non-portal Accounts will be eligible to participate in the Periodic Monthly Statement test and pay estimated duties and fees on a monthly basis. In order to participate in the Periodic Monthly Statement test consistent with the provisions of this General Notice, a Non-portal Account importer must have its duty and fee deposits guaranteed by a continuous basic importation bond. Ultimately, it is CBP's intention to permit the filing of single transaction bonds for those importers wishing to participate in the payment of estimated duties in the Periodic Monthly Statement test. However, at this stage in the test development, in order to ensure that all Non-portal Account participants receive some fiscal scrutiny, continuous bonds will be required.

In order to participate as a Non-portal Account, a party must submit to its customs broker a CBP Form 5106, Notification of Importer's Number or Notice of Change of Name or Address, with accurate information. Brokers with Portal Accounts are eligible to establish Non-portal Accounts on behalf of their clients. Brokers who accept CBP Form 5106 information from a client and submit that information to CBP in order to establish a Non-portal Account on behalf of that client should exercise due diligence to ensure that all information provided by the client that is used in the processing of merchandise is accurate. Under the procedures for establishing Non-portal Accounts for the test, the broker shall be obligated to maintain an accurately completed power of attorney on file on behalf of that importer. The broker will be required to exercise responsible supervision and control over customs business as required by the provisions of title 19, United States Code, section 1641.

Upon completion of the aforementioned requirements, holders of Non-portal Accounts may participate in Periodic Monthly Statement via a broker with a Portal Account.

Automatic Participation in ACE for C–TPAT Certified Partners

All importer certified partners in the voluntary Customs Trade Partnership Against Terrorism (C–TPAT) who do not have portal accounts are automatically considered to be ACE Non-portal Accounts eligible to participate in the Periodic Monthly Statement test. C–TPAT is an initiative between business and government to protect global commerce from terrorism. Importers applying to participate in C–TPAT, among other things, are required to be active U.S. importers or non-resident Canadian importers into the United States, have a business office staffed in the United States or Canada and have active U.S. importer of record ID(s) in any of the following formats: (1) U.S. Social Security Number; (2) U.S. Internal Revenue Service assigned ID(s); or (3) CBP assigned Importer ID.

Accordingly, inasmuch as this information is provided to CBP in the application process, C–TPAT certified partners automatically designated as Non-portal Accounts are not required to follow the Non-portal Account process described earlier in this Notice. Also, brokers with C–TPAT clients will not be required to submit the completed CBP Form 5106. Necessary powers of attorney must be maintained. In order to apply for PMS participation, the C–TPAT Non-portal Account must use a broker with an ACE Portal Account to designate to CBP the Non-portal Account as a C–TPAT certified partner and provide CBP with the importer of record IDs that have been previously designated to C–TPAT.

C–TPAT importers are encouraged to apply to become ACE Portal Accounts as described in the May 1, 2002, and February 4, 2004, **Federal Register** Notices described earlier.

C–TPAT Portal Accounts Currently Not Participating in Periodic Monthly Statement

C–TPAT certified partners who hold ACE Portal Accounts and are not taking advantage of Periodic Monthly Statement estimated duty and fee payments may do so directly with CBP, or through a customs broker with an ACE Portal Account, by providing to CBP those U.S. importer of record IDs that are part of the Portal Account and have been previously designated to C–TPAT. No further participation requirements need be met.

Previous Notices and Suspension of Regulations

All requirements and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice. Examples of such requirements and aspects are the rules regarding misconduct under the test and the required evaluation of the test (both of which are detailed in the notices published at 67 FR 21800 and 69 FR 5362).

During the testing of the Periodic Monthly Statement process, CBP is suspending provisions in Parts 24, 141, 142, and 143 of the CBP Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, and deposit of estimated duties and fees. Absent any specified alternate procedure, the current regulations apply.

All of the terms of the test and criteria for participation therein, as announced in the previous notices identified above, continue to be applicable unless changed by this notice.

Dated: October 19, 2005.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 05–21165 Filed 10–21–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3214–EM]

Alabama; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Alabama (FEMA–3214–EM), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: September 18, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

This action terminates my appointment of Ron Sherman as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21135 Filed 10–21–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1582–DR]

American Samoa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of American Samoa (FEMA–1582–DR), dated February 18, 2005, and related determinations.

EFFECTIVE DATE: October 12, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated February 18, 2005, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for American Samoa. These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21137 Filed 10–21–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1608–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1608–DR), dated October 7, 2005, and related determinations.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Hurricane Ophelia on September 11–17, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

The counties of Brunswick, Carteret, Craven, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, and Pender for Public Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21136 Filed 10–21–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Proposed Safe Harbor Agreement for the California Red-Legged Frog and Valley Elderberry Longhorn Beetle for the Burrows and Big Bluff Ranches in Tehama County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that the owners of the Burrows Ranch and Big Bluff Ranch (Applicants) have applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicants and the Service for the threatened California red-legged frog (CRLF, *Rana aurora draytonii*) and the valley elderberry longhorn beetle (VELB, *Desmocerus californicus dimorphus*). The Agreement and permit application are available for public comment.

DATES: Written comments should be received on or before November 23, 2005.

ADDRESSES: Comments should be addressed to Catrina Martin, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Ms. Catrina Martin, Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by contacting the individual named above. You may also make an appointment to view the documents at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). We have worked with the Applicants to develop the proposed Agreement for the conservation of covered species on their Ranches in Tehama County, California.

This Agreement allows for management and conservation of the CRLF and VELB (covered species) on 7,450 acres of private land, owned by the Applicants in Tehama County, California. The proposed duration of the Agreement is 15 years, and the proposed term of the enhancement of a survival permit is 17 years. The permit would run the additional 2 years upon a determination by the Service that the actions identified in the Agreement were implemented prior to its 15 year expiration. This Agreement will allow the Applicants to return to baseline condition after 15 years, if so desired by the Applicants.

The Applicants also will receive incidental take authorization, should take of the covered species occur while conducting otherwise lawful activities. While unlikely, it is possible that in the course of normal activities, the Applicants could take a covered species. The Agreement fully describes the proposed project, management actions, and the conservation benefits that will be gained for the CRLF and the VELB.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis

for this determination in an Environmental Action Statement, which is also available for public review.

The presence of both CRLF and VELB on the enrolled properties is uncertain at this time due to lack of detailed survey information. For the purposes of the Agreement, the Service and Applicants have set the baseline for CRLF and VELB as the habitat that existed on the ranches prior to wetland creation activities. Therefore, the CRLF baseline is 18 reservoirs comprising approximately 45 acres. Sixteen of the reservoirs occur on the Burrows Ranch and two on the Big Bluff Ranch. For the VELB, the baseline is 65 naturally occurring elderberry bushes, of which 39 occur on the Burrows Ranch and 25 occur on the Big Bluff Ranch.

Under the Agreement, the Applicants would or have undertaken activities to benefit the CRLF. The Applicants have fenced nine existing reservoirs and six newly created ponds and installed watering troughs in order to exclude livestock from the reservoirs. The Applicants propose to: (1) Manage existing wetlands (through the use of livestock or light equipment) to maintain open water and wetland vegetation to benefit CRLF; (2) where practical and feasible for the Applicants and where it does not interfere with the operation of the Ranches, undertake bullfrog eradication efforts in ponds where bullfrogs are present; and (3) where practical and feasible for the Applicants and where it does not interfere with the operation of the Ranches, fence additional reservoirs and newly created ponds to exclude livestock. In addition to this, Burrows Ranch has created approximately 5.7 acres of ponds. These ponds were developed through a cooperative agreement with the Service's Partners for Fish and Wildlife program.

To benefit the VELB the Applicants propose to: (1) Manage vegetation and activity around the elderberry plants following the most current guidelines and measures developed and approved by the Service; (2) allow for recruitment of elderberry plants within riparian areas near existing elderberry plant communities by allowing all newly established elderberry plants within 50 feet of existing elderberry plants to grow and mature; and (3) work with the Service to identify suitable habitat areas and once funding is secured, plant elderberry bushes in areas amenable to the Applicants.

Under the Agreement, consistent with the Service's Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the Applicants authorizing incidental take as a result of normal land management activities on the Ranches' 7,450 acres. The properties subject to this Agreement range in elevation from approximately 800 feet to 1,760 feet and have traditionally been used for agricultural production, including cattle grazing and farming for dry land crops. Some of the land use activities that the Applicants have completed to further their land stewardship goals and to increase income from hunting and livestock grazing include creating wildlife habitat ponds for waterfowl, amphibians, game species, and others; fencing existing reservoirs and installing watering troughs in order to exclude livestock from the reservoirs to improve habitat for waterfowl; maintaining and monitoring wood duck nest boxes; clearing decadent brush and reseeding to annual clovers and perennial grasses to provide wildlife food and cover; planting grains and alfalfa for wildlife; and holding annual Stewardship Days in which neighbors, college students, resource agency employees, and others learn about sustainable ranch management and wildlife habitat improvement techniques, conduct vegetation and wildlife monitoring, and more.

Public Review and Comments

Individuals wishing copies of the permit application, copies of our preliminary Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicants for take of the CLRF and the VELB incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: October 18, 2005.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–21172 Filed 10–21–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A proposal extending information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the proposal by fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: Desk Officer for the Interior Department. Send copies of your comments to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, or e-mail (*jcordyac@usgs.gov*).

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Earthquake Report.

OMB Approval No: 1028–0048.

Summary: The collection of information referred herein applies to a World-Wide Web site questionnaire that permits individuals to report on the effects of the shaking from an earthquake—on themselves personally, buildings, other man-made structures, and ground effects such as faulting or landslides. The USGS may use the information to provide qualitative, quantitative, or graphical descriptions of earthquake damage.

Estimated Completion Time: 6 minutes.

Estimated Annual Number of Respondents: 100,000.

Frequency: After each earthquake.

Estimated Annual Burden Hours: 10,000 hours.

Affected Public: The general public.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Web site (*http://pasadena.wr.usgs.gov/shake/*).

Dated: September 27, 2005.

Linda C. Gundersen,

Acting Associate Director for Geology.

[FR Doc. 05–21164 Filed 10–21–05; 8:45 am]

BILLING CODE 4310–17–M

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter ''the Committee'').

DATES: The meeting will take place on November 14, 2005, from 8:30 a.m. to 5 p.m. and on November 15, 2005, from 8:30 am to 12 noon.

ADDRESSES: The meeting will take place at the Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Please access the building at the Independence Avenue entrance. Signs will be posted in the lobby to direct attendees to the meeting location.

FOR FURTHER INFORMATION CONTACT: Kristina Rose, The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530; by telephone at: (202) 307–6026; e-mail: *Kristina.Rose@usdoj.gov;* or fax: (202) 307–3911. You may also view the Committee's Web site at: *http://www.usdoj.gov/ovw/nac/welcome.html.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws. The Committee also assists in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking. Because violence against women is increasingly recognized as a public health problem of staggering human cost, the Committee brings national attention to the problem to increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work and the federal government's response to violence against women; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws.

Schedule: This meeting will be held on November 14, 2005, from 8:30 a.m. until 5 p.m. and on November 15, 2005, from 8:30 am until 12 noon, and will include breaks and a working lunch. Time will be reserved for public comment on November 14 beginning at 11:30 a.m. and ending at 12 p.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space-available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Kristina Rose by e-mail at: *Kristina.Rose@usdoj.gov*; or fax: (202) 307–3911. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodations in order to attend the meeting should notify Kristina Rose by e-mail at: *Kristina.Rose@usdoj.gov*; or fax at: (202) 307–3911, no later than November 4, 2005. After this date, we will attempt to satisfy accommodation requests, but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by November 4, 2005, to Kristina Rose at The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530. Comments may also be submitted by e-mail at *Kristina.Rose@usdoj.gov*; or fax at (202) 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will discuss the implementation of the Violence Against Women Act of 1994 and the Violence Against Women Act of 2000, are requested to reserve time on the agenda by contacting Kristina Rose by e-mail at *Kristina.Rose@usdoj.gov*; or fax at (202) 307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the issue. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at 800 K Street, NW., Ste. 920, Washington, DC 20530.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 05–21120 Filed 10–21–05; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Disaster Unemployment Assistance: Extension of Period for Filing Claims and for the Submission of Documentation

The Employment and Training Administration (ETA) administers Federal law requirements pertaining to Disaster Unemployment Assistance (DUA). These requirements are found in Federal regulations at 20 CFR 625. Due to the devastation created by Hurricane Katrina, ETA, through its Regional Offices, has informed the states of Alabama, Louisiana, and Mississippi that two filing deadlines for DUA are being extended. The memoranda are being published in the **Federal Register** in order to inform the public.

Dated: October 17, 2005.

Emily Stover Derocco,

Assistant Secretary of Labor.

September 9, 2005

Memorandum For: Helen N. Parker, Regional Administrator, Atlanta. Joseph C. Juarez, Regional Administrator, Dallas.

From: Cheryl Atkinson, Administrator, Office of Workforce Security.

Subject: Extension of 30-day Filing Period for Disaster Unemployment Assistance (DUA) for Claims Related to Hurricane Katrina.

Due to the devastation caused by Hurricane Katrina, the filing period for DUA is extended through November 30, 2005. This extension is based on the fact that there is widespread dislocation of workers and damage to the affected areas' infrastructure inflicted by Hurricane Katrina, which will make it difficult for individuals to file within the 30-day filing period. Additional time will afford those individuals a sufficient opportunity to file a DUA claim. There is good cause under 20 CFR 625.8(a) to extend the filing period for DUA in this situation.

Please advise the States of Alabama, Louisiana, and Mississippi of this extension. You should also ensure that the agencies work with the Federal Emergency Management Agency (FEMA) to release appropriate announcements to the media. Please advise states to use the services of FEMA's Joint Field Offices to issue public service announcements and media releases.

September 16, 2005

Memorandum For: Helen N. Parker, Regional Administrator, Atlanta. Joseph C. Juarez, Regional Administrator, Dallas.

From: Emily Stover Derocco, Assistant Secretary of Labor.

Subject: Disaster Unemployment Assistance (DUA)—Extension of Period for Submitting Documentation.

Due to the devastation caused by Hurricane Katrina, the time required for submission of documentation under 20 CFR 625.6(e)(1) is extended. For purposes of Hurricane Katrina, this documentation must be submitted within 90 days calendar days after the filing of the initial application for DUA. This extension is based on the fact that there has been widespread evacuation of workers due to the hurricane. It is unlikely that evacuees who do not have documentation at the time of filing will be able to obtain documentation within the 21-day period specified by the regulation because they will not have access to the appropriate documentation and may have to rely on others to provide this documentation.

More specifically, 20 CFR 625.6(e)(1) provides that when an applicant's weekly DUA amount is based only ''on the individual's statement,'' the individual shall furnish documentation in support of this statement ''within 21 calendar days of the filing of the initial application for DUA.'' As discussed above, for purposes of Hurricane Katrina, this period is extended to within 90 calendar days of filing the initial application.

Please advise the States of Alabama, Louisiana, and Mississippi of this extension. These states should take appropriate action to notify both future applicants and applicants who were initially unable to supply documentation of this extension.

[FR Doc. E5–5857 Filed 10–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

RIN 1215–AB52

Union Officials: Guidelines for Fiduciary Responsibilities Under Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 501

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Request for information from the public, extension of comment period.

SUMMARY: This document extends the period for comments on the Request for Information published on August 29, 2005 (70 FR 51228). The request seeks information from the public to assist the Department in determining whether to issue guidelines concerning the fiduciary obligations of union officers, agents, shop stewards and other representatives under the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), and the content of any such guidelines. The comment period, which was to expire on October 28, 2005, is extended ninety days to January 26, 2006.

DATES: Comments on the Request for Information published on August 29, 2005 (70 FR 51228) must be received on or before January 26, 2006.

ADDRESSES: You may submit comments, identified by RIN 1215–AB52, by any of the following methods:

E-mail: *OLMS-REG-1215-AB52@dol.gov*.

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (OLMS).

Mail: Mailed comments should be sent to Kay Oshel, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

OLMS recommends that you confirm receipt of your comment by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at:

Kay H. Oshel, U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov*, (202) 693–1233 (this is not a toll-free number), (800) 877–8339 (TTY/TDD). E-mail: *OLMS-REG–1215-AB52@dol.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2005 (70 FR 51288), the Department published a request for information from the public. The request seeks information to assist the Department in determining whether to issue guidelines concerning the fiduciary obligations of union officers, agents, shop stewards and other representatives under the LMRDA. The request also asked for comments concerning what specific standards should be included in any such guidelines. Interested persons were invited to submit comments on or before October 28, 2005, 60 days after the publication of the notice. Based on separate requests by the American Federation of Labor and Congress of Industrial Organizations and the United Brotherhood of Carpenters and Joiners of America for additional time to prepare comments, the Department has decided to extend the comment period for an additional ninety days.

The request for information is available on the web site maintained by OLMS at *http://www.olms.dol.gov*. (Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, at *olms-mail@dol-esa.gov*, or at (202) 693–0122 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Signed at Washington, DC, this 19th day of October, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 05–21275 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Big Ridge, Inc.

[Docket No. M–2005–067–C]

Big Ridge, Inc., 420 Long Lane Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Willow Lake Mine (MSHA I.D. No. 11–03054) located in Saline County, Illinois. The petitioner proposes to use a 480-volt, three-phase diesel-powered generator to move equipment throughout the Willow Lake Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Six M Coal Company

[Docket No. M–2005–068–C]

Six M Coal Company, 482 High Road, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment) to its No. 1 Slope Mine (MSHA I.D. No. 36–09138) located in Dauphin County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails are not practical. The petitioner proposes to use two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection at the No. 1 Slope Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Twentymile Coal Company

[Docket No. M–2005–069–C]

Twentymile Coal Company, Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Foidel Creek Mine (MSHA I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in or inby the last open crosscut including in the return airways. The petitioner has listed in this petition for modification specific terms and conditions that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Twentymile Coal Company

[Docket No. M–2005–070–C]

Twentymile Coal Company, Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility) to its Foidel Creek Mine (MSHA I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment on longwall faces or within 150 feet of pillar workings. The petitioner has listed in this petition for modification specific terms and conditions that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail: *zzMSHA-Comments@dol.gov*; Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 23, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 19th day of October 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–21201 Filed 10–21–05; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that eight meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Music (application review A): November 7–10, 2005 in Room 714. A portion of this meeting, from 3:15 p.m. to 4 p.m. on Thursday, November 10th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on November 7th through 9th, and from 9 a.m. to 3:15 p.m. and from 4 p.m. to 4:30 p.m. on November 10th, will be closed.

Presenting (application review A): November 14–16, 2005 in Room 716. This meeting, from 9 a.m. to 6 p.m. on November 14th and 15th, and from 9 a.m. to 4:45 p.m. on November 16th, will be closed.

Theater (application review A): November 15–18, 2005 in Room 714. A portion of this meeting, from 3 p.m. to 4:30 p.m. on Thursday, November 17th, will be open to the public for policy discussion. The remainder of the meeting, from 9:30 a.m. to 6:30 p.m. on November 15th and 16th, from 9:30 a.m. to 3 p.m. and 4:30 p.m. to 6:30 p.m. on November 17th, and from 9 a.m. to 4:15 p.m. on November 18th, will be closed.

Theater (application review B): November 18, 2005 in Room 714. This meeting, from 4:15 p.m. to 5 p.m., will be closed.

Presenting (application review B): November 17–18, 2005 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on November 17th and from 9 a.m. to 1:45 p.m. on November 18th, will be closed.

Folk & Traditional Arts (application review): November 29–December 2, 2005 in Room 716. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on Friday, December 2nd, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on November 29th through December 1st, and from 9 a.m. to 1:30 p.m. and from 2:30 p.m. to 4:30 p.m. on December 2nd, will be closed.

Local Arts Agencies (application review): November 29–30, 2005 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on November 29th and from 9 a.m. to 3 p.m. on November 30th, will be closed.

Music (application review B): November 29–30, 2005 in Room 714. A portion of this meeting, from 4:45 p.m. to 5:15 p.m. on Wednesday, November 30th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on November 29th and from 9 a.m. to 4:45 p.m. and from 5:15 p.m. to 5:45 p.m. on November 30th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 18, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–21160 Filed 10–21–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #58

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on Thursday, November 10, 2005 from 9 a.m. to 5 p.m. (ending time is tentative). The meeting will be held at The Madison Hotel, the Mount Vernon Room—Salon B, 1177 15th Street, NW., Washington, DC 20005. Please be advised that, due to scheduling considerations, the starting time of the meeting may be delayed. Individuals interested in attending are encouraged to contact the President's Committee to confirm the starting time.

The Committee meeting will begin with a welcome, introductions, and announcements. Updates on Committee programs and activities will follow, including the recent U.S. Summit on Cultural and Heritage Tourism and youth arts and humanities projects. In addition, reports are anticipated on the condition of past Coming Up Taller awardees in the Gulf Region and a summary from Mr. Lawrence Reger, Executive Director, Heritage Preservation, on preservation/conservation efforts in this region. In addition to hearing remarks from the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services, the President's Committee will continue discussion of its actions in international cultural relations. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Jenny Schmidt of the President's Committee seven (7) days in advance of the meeting at (202) 682–5560 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Schmidt.

If you need special accommodations due to a disability, please contact Ms. Schmidt through the Office of AccessAbility, National Endowment for

the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5560, at least seven (7) days prior to the meeting.

Dated: October 18, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–21161 Filed 10–21–05; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–387]

Susquehanna Steam Electric Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–14 and NPF–22, issued to PPL Susquehanna, LLC (PPL, the licensee), for operation of the Susquehanna Steam Electric Station, Unit 1 (SSES 1), located in Berwick, Pennsylvania.

The proposed amendment would revise the SSES 1 Technical Specification (TS) Section 2.1.1.2 with regard to the Unit 1 Cycle 14 (U1C14) minimum critical power ratio (MCPR) safety limit (SL) for two-loop operation from 1.08 to 1.09 following implementation of a redesigned core. The change to the MCPR SL is necessary due to control cell friction issues which necessitate a U1C14 mid-cycle core redesign and unit shutdown to implement.

The exigent amendment request is being made following PPL's determination, based in part, on testing performed the weekend of September 30, 2005, that a mid-cycle core redesign was the most prudent course of action to ensure safe, reliable operation for the remainder of U1C14. Additionally, PPL requests the proposed change on an exigent basis to avoid unnecesary delays in the Unit 1 restart following its upcoming maintenance outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the MCPR Safety Limits does not directly or indirectly affect any plant system, equipment, component, or change the processes used to operate the plant. Further, the revised U1C14 MCPR Safety Limits are generated using NRC approved methodology and meet the applicable acceptance criteria. In addition, the effects of channel bow were conservatively addressed by increasing the amount of channel bow assumed in the MCPR SL calculation. Thus, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Prior to the restart of U1C14, licensing analyses will be performed on the redesigned core (using NRC approved methodology referenced in Technical Specification Section 5.6.5.b) to determine changes in the critical power ratio as a result of anticipated operation occurrences. These results will be added to the MCPR Safety Limit values proposed herein to generate the MCPR operating limits in the U1C14 Core Operating Limits Report (COLR). The COLR operating limits thus assure that the MCPR Safety Limit will not be exceeded during normal operation or anticipated operational occurrences. Postulated accidents are also analyzed to confirm NRC acceptance criteria are met.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change to the MCPR Safety Limits does not directly or indirectly affect any plant system, equipment, or component and therefore they do not affect the failure modes of any of these items. Thus, the proposed change does not create the possibility of a previously unevaluated operator error or a new single failure.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Since the proposed change does not alter any plant system, equipment, component, or the processes used to operate the plant, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The proposed MCPR Safety Limits do not involve a significant reduction in the margin of safety as currently defined in the Bases of the applicable Technical Specification sections, because the MCPR Safety Limits calculated for the remaining U1C14 operation preserve the required margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30

a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 14, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of October 2005.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Section Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5854 Filed 10–21–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27117; 812–13097]

BBH Fund, Inc. and Brown Brothers Harriman & Co.; Notice of Application

October 18, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements (''Subadvisory Agreements'') without shareholder approval.

Applicants: BBH Fund, Inc. (''BBH'') and Brown Brothers Harriman & Co. (the ''Adviser,'' together with BBH, the ''Applicants'').

Filing Date: The application was filed on June 14, 2004 and amended on June 17, 2005, August 8, 2005 and October 12, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 14, 2005, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, Gail C. Jones, Esq., Reed Smith LLP, Federated Investors Tower, 12th Floor, 1001 Liberty Avenue, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. BBH, a Maryland corporation, is registered under the Act as an open-end management investment company. BBH currently offers multiple series (each a ''Fund,'' and collectively, the ''Funds''), each of which has its own investment objectives, policies and restrictions.[1] BBH International Equity Fund (''International Equity Fund'') is the only Fund that currently intends to rely on the requested order.

2. The Adviser, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to each Fund pursuant to an investment advisory agreement with BBH (''Advisory Agreement''), that was approved by the board of directors of BBH (the ''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Adviser provides the International Equity Fund with investment research, advice and supervision, and furnishes an investment program for the Fund consistent with the investment objectives and policies of the Fund. The Adviser has entered into, or will enter into, Subadvisory Agreements with subadvisers (''Subadvisers''), to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for the International Equity Fund. Pursuant to the Advisory Agreement, the Adviser receives a fee from the International Equity Fund based on the average daily net assets. Each Subadviser is or will be an investment adviser registered under the Advisers Act. The Adviser has delegated daily management of the International Equity Fund's assets to Subadvisers, who are paid by the Adviser out of the fee it receives from the International Equity Fund. In the future, a Fund may contract directly with and pay a Subadviser directly (''Direct Contract Fund'').

3. Applicants request relief to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders will rely on the Adviser, subject to oversight by the Board, to select Subadvisers for the Funds. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser from acting promptly in a manner considered advisable by the

[1] Applicants also request relief with respect to any other existing or future registered open-end management investment company or series therof that: (a) Is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the management structure described in this application; and (c) complies with the terms and conditions of this application (included in the term ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant. If the name of any Fund contains the name of Subadviser (as defined below), the name of the Adviser that serves as the primary adviser to the Fund will preced the name of the Subadviser.

Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f–2 under the Act.

4. Applicants note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[2]

Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before shares of such Fund are offered to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the ''manager of managers'' structure described in the application. Such Fund's prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management and administrative services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (i) Set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) when appropriate allocate and reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objective, policies, and restrictions.

4. Each Fund will comply with the fund governance standards that the Commission adopted in Investment Company Act Release No. 26520, by the compliance date set forth therein (''Compliance Date''). Prior to the Compliance Date, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors. Any person who acts as legal counsel for the Independent Directors will be an independent legal counsel, as defined in rule 0–1(a)(6) under the Act.

5. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Shareholders of any Direct Contract Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

8. No director or officer of a Fund, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the applicable Fund all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, the Adviser will provide shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

10. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5862 Filed 10–21–05; 8:45 am]

BILLING CODE 8010–01–P

[2] Investment Company Act Release No. 26230 (Oct. 23, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8628; 34–52629, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Time change for meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it is changing the start time of its public meeting on Monday, October 24, 2005, from 9 a.m. to 9:30 a.m. This meeting will be held in Multi-Purpose Room L006 of the Commission's headquarters, 100 F Street, NE., Washington, DC 20549. The start time for the second day of this meeting Tuesday, October 25, 2005, will remain 9 a.m.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: October 18, 2005.

Jonathan G. Katz,

Committee Management Officer.

[FR Doc. E5–5861 Filed 10–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52625; File No. SR–CBOE–2005–81

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Options on a Reduced-Value Version of the Standard and Poor's 500 Stock Index

October 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2005, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to allow the Exchange to list options on a reduced-value version of the Standard and Poor's 500 Stock Index at $1 strike price intervals.

The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CBOE Rule 24.9 (''Terms of Index Option Contracts'') by adding a new interpretation that would allow the Exchange to list series on the reduced-value version of the Standard & Poor's 500 Stock Index (''S&P 500 Index'') option (''Mini-SPX option''), which is based on 1/10th of the value of the S&P 500 Index, at strike price intervals no less than $1.[3]

Similarly, the Exchange currently lists and trades options at $1 strike price interval on an exchange traded fund (''ETF'') based on the S&P 500 index; specifically, the Standard & Poor's Depositary Receipts (commonly known as the ''SPDRs'') ETF.[4] The SPDR, like the Mini-SPX option, is designed to track the performance of the S&P 500 Index and the price of one SPDR roughly approximates 1/10th the value of the S&P 500 Index. The Exchange believes it would be logical to set the strike price interval for the Mini-SPX option at the same interval as options on the SPDR, because setting the price interval higher for Mini-SPX options than for SPDR options could cause confusion to investors and would put Mini-SPX options at a competitive disadvantage to SPDR options. As such, the Exchange proposes to list series on Mini-SPX options at $1 strike price intervals.

The Exchange also proposes to impose certain conditions upon the listing of $1 strike price series on Mini-SPX options, as described below. First, to limit the number of series listed, the Exchange would not be allowed to list new series at less than $1 strike price intervals on Mini-SPX options at strike prices that are more than twenty percentage points (20%) away from one-tenth (1/10th) the current index value of the S&P 500 Index. For example, if the current index value of the S&P 500 Index were 1,200.00, the Exchange would be permitted to list $1 strike price series on Mini-SPX options at strike prices ranging from $96 to $144.

The Exchange would be permitted to list series on Mini-SPX options at $3 or greater strike price intervals with strike prices that are no more than twenty-five percentage points (25%) away from 1/10th the current value of the S&P 500 Index and the Exchange would be permitted to list series at $5 or greater strike price intervals on Mini-SPX options that are more than 25% away from one-tenth of the current value of the S&P 500 Index. Also, the Exchange would not be permitted to list LEAPS or reduced-value LEAPS on Mini-SPX options at intervals less than $5.

Finally, as long as there are open Mini-SPX option series listed at $1 strike price intervals, the Exchange would be required to surrender one of its five selections under the CBOE $1 Strike Price Pilot Program (''Pilot'').[5] Under the terms of the Pilot, the Exchange may select up to five different equity option classes on which series may be listed at $1 strike price intervals.[6] This proposal would limit the listing of option series at $1 strike price intervals on the Exchange in the Pilot to four classes when Mini-SPX options are listed at $1 strike price intervals. If the Exchange were to determine to discontinue listing Mini-SPX option series at $1 strike price intervals, the Exchange would again be free to select up to five option classes for inclusion in the Pilot. Accordingly, CBOE's Rule provisions relating to the Pilot will be amended to reference these measures.

As a technical matter, the Exchange also proposes to amend Interpretation and Policy .09 to Rule 24.9, which describes the current index value of a ''reduced-value option on the Standard & Poor's 500 Stock Index'',[7] to indicate that the new term ''Mini-SPX'' will be used to describe the option product.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[3] Currently, under Interpretation and Policy .01 to CBOE Rule 24.9, the Exchange has authority to list options on the Mini-SPX at $2.50 strike price intervals.

[4] The Exchange has authority to list option series on any qualifying ETF at $1 strike price intervals. *See* Interpretation and Policy .08 to CBOE Rule 5.5. *See also* Interpretation and Policy .07 to CBOE Rule 5.5, which allows the Exchange to list $1 strike price series on options based on an ETF that represents an interest in the securities that make up the Nasdaq-100 Index (''QQQQ''), regardless of the whether the value of the QQQQ exceeds $200.

[5] *See* Interpretation and Policy .01(a) to CBOE Rule 5.5.

[6] Under the terms of the Pilot, the Exchange also may list series at $1 strike price intervals on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar Pilot under their respective rules. The CBOE Pilot also provides for other restrictions that will not necessarily apply to Mini-SPX options. *See supra* note 5.

[7] This description was added at the time the Exchange was granted approval to list and trade Mini-SPX options. *See* Securities Exchange Act Release No. 32893 (September 14, 1993); 58 FR 49070 (September 21, 1993) (allowing CBOE to list options on the Mini-SPX).

Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–81 and should be submitted on or before November 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[10] and, in particular, with the requirements of Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules promote just and equitable principles of trade and facilitate transactions in securities, and, in general, protect investors and the public interest.

The Commission believes that the CBOE's proposal should provide investors with increased flexibility in satisfying their investment objectives by allowing them to purchase and sell (under certain conditions) Mini-SPX options at strike price intervals of no less than $1. In addition, the proposed restrictions that would permit the listing of options at $1 and $3 strike price intervals only for strike prices that are within 20% and 25%, respectively, of 1/10 of the current value of the S&P 500 Index should help to mitigate the effect of this proposal on the use of options system capacity.

The Exchange has requested that the Commission approve the proposed rule change on an accelerated basis. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the CBOE received approval to list and trade options on the Mini-SPX more than 10 years ago. At that time, the proposal was noticed for the full comment period and no comments were received. The Commission believes that the proposal, which would permit the exchange to begin listing options on the Mini-SPX at $1 strike price intervals on an expedited basis, raises no new issues of regulatory concern. Accordingly, the Commission finds that good cause exists, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[13] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2005–81) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5859 Filed 10–21–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered its impact on efficiecy, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52624; File No. SR–CBOE–2005–79

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments

October 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2005, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker (''RMM'') appointments. CBOE Rule 8.4 provides that RMMs will have a Virtual Trading Crowd (''VTC'') Appointment, which confers the right to quote electronically in a certain number of products selected from various ''tiers.'' There are five tiers that are structured according to trading volume statistics and an ''A+'' Tier which consists of three option classes—options on Standard & Poor's Depositary Receipts, options on the Nasdaq-100 Index Tracking Stock, and options on Diamonds.

CBOE proposes to amend CBOE Rule 8.4(d) relating to the ''A+'' Tier to include an additional option class in the ''A+'' Tier, namely reduced-value options on the Standard & Poor's 500 Stock Index. CBOE believes it is appropriate to include this option class in this tier based on its anticipated trading volume.

CBOE also proposes to delete Interpretation .01 to CBOE Rule 8.4 as it is no longer necessary. Interpretation .01 initially was approved in April 2005 in connection with CBOE's implementation of its RMM program.[5] The purpose of the inactivity fee was to prevent RMMs from applying for appointments in products in which they had no intention of quoting, thereby preventing other members from securing appointments in products. CBOE subsequently determined to eliminate the inactivity fee,[6] but did not at that time delete reference to the inactivity fee in Interpretation .01. This rule filing makes that change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] As required under Rule 19b–4(f)(6)(iii) under the Act,[11] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed change to the ''A+'' Tier that is described in this proposed rule change and the deletion of Interpretation .01 to CBOE Rule 8.4 do not raise any new, unique, or substantive issues from those raised in the filing that initially established the ''A+'' Tier,[14] or the filing that eliminated the inactivity fee.[15] Accordingly, the Commission designates the proposal to become operative immediately.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[5] *See* Securities Exchange Act Release No. 51542 (April 14, 2005), 70 FR 20952 (April 22, 2005), approving SR–CBOE–2005–22.

[6] *See* Securities Exchange Act Release No. 51705 (May 18, 2005), 70 FR 30158 (May 25, 2005) (SR–CBOE–2005–35).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] *Id.*

[14] *See supra* note 5.

[15] *See supra* note 6.

[16] For purposes only of waiving the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–79 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–79 and should be submitted on or before November 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5860 Filed 10–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52612; File No. SR–CHX–2005–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Participant Fees and Credits

October 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. On October 3, 2005, CHX filed Amendment No. 1 to the proposed rule change.[3] On October 12, 2005, CHX filed Amendment No. 2 to the proposed rule change.[4] The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Participant Fee Schedule (the ''Fee Schedule'') to confirm the assignment fees that apply when the Exchange's CSAE assigns a group of securities to a specialist firm in competition with other specialist firms. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

Participant Fees and Credits

* * * * *

D. Specialist Assignment Fees.	
Specialist Application Fee	No change to text
Assignment of Dual Trading System Securities.	Once the Committee on Specialist Assignment and Evaluation approves a Participant to act as specialist in a security (*or a group of securities*), that Participant must pay the following fee:
* * * * * * *	
$1,000	If the security (*or group of securities*) was assigned in competition with at least one other Participant and up to one-third of all Participants that trade Dual Trading System Securities
$4,000	If the security (*or group of securities*) was assigned in competition with more than one-third of all Participants that trade Dual Trading System Securities
Assignment of Nasdaq/NM Securities.	Beginning on September 1, 2004, once the Committee on Specialist Assignment and Evaluation approves a Participant to act as specialist in a security (*or a group of securities*), that Participant must pay the following fee:
* * * * * * *	
$1,000	If the security (*or group of securities*) was assigned in competition with one other Participant that trades Nasdaq/NM Securities

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) made clarifying changes to the proposed rule text and the purpose section of the filing; and (2) noted that the proposed rule change is submitted in conjunction with the filing (SR–CHX–2005–23), which established a special allocation process available to the Committee on Specialist Assignment and Evaluation (''CSAE'') in special circumstances involving the allocation of more than 100 stocks at a time.

[4] In Amendment No. 2, which superseded Amendment No. 1 in its entirety, the Exchange made a minor change to the proposed rule text and made a corresponding change to the purpose section of the proposed rule change.

The effective date of the original proposed rule change is September 16, 2005, the effective date of Amendment No. 1 is October 3, 2005 and the effective date of Amendment No. 2 is October 12, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 12, 2005, the date on which the CHX filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

$4,000	If the security (*or group of securities*) was assigned in competition with two or more [member firms] *Participants* that trade Nasdaq/NM Securities

* * * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received regarding the proposal, as amended. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's CSAE is responsible for assigning securities to be traded by specialist firms.[7] Although the CSAE ordinarily assigns securities on a one-by-one basis, the CSAE could choose to assign securities in groups consisting of more than one security.

Through this submission, the Exchange proposes to modify its Fee Schedule to confirm the assignment fees that apply when the CSAE assigns a group of securities to a specialist firm in competition with other specialist firms. Specifically, the Exchange proposes to charge, for the assignment of a group of listed securities: (a) a fee of $1,000 per group, if the group was assigned in competition with at least one other participant and up to one-third of all participants trading Dual Trading System Securities; and (b) a fee of $4,000 per group, if the group was assigned in competition with more than one-third of the participants trading Dual Trading System Securities.[8] Similarly, the Exchange proposes to charge, for the assignment of a group of Nasdaq/NM securities: (x) a fee of $1,000 per group if the group of securities was assigned in competition with at least one other participant that trades Nasdaq/NM securities; and (y) a fee of $4,000 per group, if the group of securities was assigned in competition with two or more participants that trades Nasdaq/NM securities.

These changes to the Fee Schedule are submitted in connection with SR–CHX–2005–23, which proposed a change to Rule 1 of CHX Article XXX that established an allocation process available to the CSAE, in special circumstances involving the allocation of more than 100 stocks at a time.[9] If the CSAE determines that it will allocate a large number of stocks by posting groups of stocks at the beginning of the application and assignment process, then these changes to the Fee Schedule would govern the applicable assignment fees.[10]

The Exchange represents that the fees associated with the assignment of securities in competition would be the same for a single security and for a group of securities. The Exchange believes that these charges are appropriate because, among other things, the Exchange's work associated with the assignment of securities in competition is not measurably different based on the number of securities that are being assigned at a particular time. In each instance, Exchange staff gathers data relating to each applicant's demonstrated ability, experience and financial responsibility and the CSAE meets to review the data, to hear presentations from applicants and to determine the appropriate assignment decision.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among CHX's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4 thereunder[13] because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2005–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–CHX–2005–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[7] *See* Article XXX, Rule 1.

[8] ''Dual Trading System Securities'' are securities listed on the New York Stock Exchange, the American Stock Exchange or any other stock exchange that are also listed or traded on the Chicago Stock Exchange.

[9] The Commission notes that the Exchange uses the terms ''security(ies), stock(s) and issue(s)'' interchangeably. *See* Securities Exchange Act Release No. 52379 (September 2, 2005), 70 FR 53825 (September 12, 2005).

[10] According to the Exchange, assignment fees are assessed upon permanent assignment of the subject issues.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] *See supra* note 4.

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2005–25 and should be submitted on or before November 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5858 Filed 10–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52574; File No. SR–NASD–2005–099]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Restated Certificate of Incorporation of the Nasdaq Stock Market, Inc.

October 7, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On September 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend its Restated Certificate of Incorporation (''Certificate''). Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

RESTATED CERTIFICATE OF INCORPORATION OF THE NASDAQ STOCK MARKET, INC.

* * * * *

ARTICLE FOURTH

A. No change.

B. No change.

C. 1. (a) Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

(b) Except as may otherwise be provided in this Restated Certificate of Incorporation or by applicable law, the holders of the *3.75% Series A Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from time to time, the ''Series A Notes'') and the 3.75% Series B Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from time to time, the ''Series B Notes'' and, together with the Series A Notes, the ''Notes'')* [4.0% Convertible Subordinated Notes due 2006 (the ''Notes'')] which may be issued from time to time by Nasdaq shall be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq, voting together with the holders of the Common Stock (and of any other shares of capital stock of Nasdaq entitled to vote at a meeting of stockholders) as one class. Each principal amount of Notes shall be entitled to a number of votes equal to the number of votes represented by the Common Stock of Nasdaq that could then be acquired upon conversion of such principal amount of Notes into Common Stock, subject to adjustments as provided in the Notes *and the Indenture dated as of April 22, 2005 between Nasdaq and Law Debenture Trust Company of New York, as trustee, as such Indenture may be amended, supplemented or otherwise modified from time to time.* Holders of the Notes shall be deemed to be stockholders of Nasdaq, and the Notes shall be deemed to be shares of stock, solely for the purpose of any provision of the General Corporation Law of the State of Delaware or this Restated Certificate of Incorporation that requires the vote of stockholders as a prerequisite to any corporate action.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall (i) any record owner of any outstanding Common Stock or Preferred Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, or (ii) any holder of any Notes which are beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock, Preferred Stock and/or Notes [(''Excess Shares and/or Notes'')] in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter (''*Excess Shares and/or Notes*''), be entitled or permitted to vote any Excess Shares and/or Notes on such matter. For all purposes hereof, any calculation of the number of shares of stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d–3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), as in effect on the date of filing this Restated Certificate of Incorporation.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made minor edits to the originally filed proposed rule change and clarified the proposed definition of ''Broker Affiliate'' set forth in Paragraph C.6. of Nasdaq's Restated Certificate of Incorporation to include a broker or dealer or an affiliate thereof. In Amendment No. 1, Nasdaq also reflected approval of the proposal by the Board of Directors of Nasdaq and by its stockholders.

3. The following definitions shall apply to this paragraph C. of this Article Fourth:

(a) ''Affiliate'' shall have the meaning ascribed to that term in Rule 12b–2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of filing this Restated Certificate of Incorporation.

(b) A person shall be deemed the ''beneficial owner'' of, shall be deemed to have ''beneficial ownership'' of and shall be deemed to ''beneficially own'' any securities:

(i) Which such person or any of such person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule l3d–3 of the General Rules and Regulations under the Exchange Act as in effect on the date of the filing of this Restated Certificate of Incorporation;

(ii) Which such person or any of such person's Affiliates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) Which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's Affiliates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to (b)(ii)(B) above) or disposing of such securities; provided, however, that (A) no person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such person's status or authority as such, to be the ''beneficial owner'' of, to have ''beneficial ownership'' of or to ''beneficially own'' any securities that are ''beneficially owned'' (as defined herein), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person, and (B) the Voting Trustee, as defined in the Voting Trust Agreement by and among Nasdaq, the National Association of Securities Dealers, Inc., a Delaware corporation (the ''NASD''), and The Bank of New York, a New York banking corporation, as such may be amended from time to time (the ''Voting Trust Agreement''), shall not be deemed, solely by reason of such person's status or authority as such, to be the ''beneficial owner'' of, to have ''beneficial ownership'' of or to ''beneficially own'' any securities that are governed by and held in accordance with the Voting Trust Agreement.

(c) A ''person'' shall mean any individual, firm, corporation, partnership, limited liability company or other entity.

(d) ''Exempt Person'' shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or trustee holding stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.

(e) ''Subsidiary'' of any person shall mean any corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions are beneficially owned, directly or indirectly, by such person, and any corporation or other entity that is otherwise controlled by such person.

(f) The Board shall have the power to construe and apply the provisions of this paragraph C. of this Article Fourth and to make all determinations necessary or desirable to implement such provisions, including, but not limited to, matters with respect to (1) the number of shares of stock beneficially owned by any person, (2) the number of Notes beneficially owned by any person, (3) whether a person is an Affiliate of another, (4) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in the definition of beneficial ownership, (5) the application of any other definition or operative provision hereof to the given facts, or (6) any other matter relating to the applicability or effect of this paragraph C. of this Article Fourth.

4. The Board shall have the right to demand that any person who is reasonably believed to hold of record or beneficially own Excess Shares and/or Notes supply Nasdaq with complete information as to (a) the record owner(s) of all shares and/or Notes beneficially owned by such person who is reasonably believed to own Excess Shares and/or Notes, and (b) any other factual matter relating to the applicability or effect of this paragraph C. of this Article Fourth as may reasonably be requested of such person.

5. Any constructions, applications, or determinations made by the Board, pursuant to this paragraph C. of this Article Fourth, in good faith and on the basis of such information and assistance as was then reasonably available for such purpose, shall be conclusive and binding upon Nasdaq, its stockholders and the holders of the Notes.

6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares and/or Notes beneficially owned by (a) the NASD or its Affiliates until such time as the NASD beneficially owns five percent (5%) or less of the outstanding shares of stock and/or Notes entitled to vote on the election of a majority of directors at such time, (b) any other person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock and/or Notes entitled to vote on the election of a majority of directors at such time or (c) Hellman & Friedman Capital Partners IV, L.P., H&F International Partners IV–A, L.P., H & F International Partners IV–B, L.P., [and] H&F Executive Fund, IV L.P.; *Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., and Silver Lake Investors, L.P. or their respective affiliated investment funds that are: (i) Under common management and control, (ii) comprised of members or partners with the same ultimate ownership, and (iii) subject to*

terms and conditions that are substantially identical in all material respects, if the Board has approved an exemption for any other person pursuant to section 6(b) of this paragraph C. of this Article Fourth (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market) *provided that in no event shall the exemption contained in Section 6(c) cause a registered broker or dealer or an Affiliate thereof (a ''Broker Affiliate,'' provided that, a Broker Affiliate shall not include an entity that either owns ten percent or less of the equity of a broker or dealer, or for which the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity) to receive an exemption for a greater percentage of voting securities than has been granted to another Broker Affiliate by the Board.* The Board, however, may not approve an exemption under section 6(b): (i) For a *Broker Affiliate* [registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity);] or (ii) an individual or entity that is subject to a statutory disqualification under section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder or holder of Notes if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, The Nasdaq Stock Market or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be invalid, prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq, its stockholders and the holders of the Notes that each such remaining provision (or portion thereof) of this paragraph C. of this Article Fourth remains, to the fullest extent permitted by law, applicable and enforceable as to all stockholders and all holders of Notes, including stockholders and holders of Notes that beneficially own Excess Shares and/or Notes, notwithstanding any such finding.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq states that the purpose of the proposed rule change is to amend the Certificate to afford the holders of 3.75% Series A Convertible Notes due October 2012 (''Series A Notes'') and the 3.75% Series B Convertible Notes due 2012 (''Series B Notes'' and, collectively with the Series A Notes, the ''Notes'') the right to vote with Nasdaq stockholders. The Series A Notes and the Series B Notes were issued in connection with Nasdaq's entry into a definitive agreement and plan of merger (''Merger Agreement'') with Instinet Group Incorporated (''Instinet''), under which Nasdaq will acquire all outstanding shares of Instinet for an aggregate purchase price of approximately $1.878 billion in cash and Instinet will merge into a wholly owned subsidiary of Nasdaq (''Merger''). The purchase price is comprised of approximately $934.5 million from Nasdaq, approximately $207.5 million from Iceland Acquisition Corp., an affiliate of Silver Lake Partners II, L.P. (''SLP''), a private equity fund, pursuant to the sale of Instinet's institutional brokerage business, and the balance from Instinet's available cash, including approximately $174 million from the sale of Instinet's Lynch, Jones & Ryan, Inc. subsidiary (''LJR''). As a result of the Merger, Instinet would become a wholly owned subsidiary of Nasdaq. Nasdaq states that completion of the Merger is subject to Instinet's sale of LJR and customary closing conditions, including regulatory approvals, including approval of the Merger by the Commission and approval under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''). Nasdaq expects the Merger to be completed during the fourth quarter of 2005 or the first quarter of 2006.

Nasdaq concurrently entered into a definitive agreement (''Transaction Agreement'') to sell Instinet's institutional brokerage business to Iceland Acquisition Corp., an affiliate of SLP, immediately upon the closing of the Merger for a purchase price of $207.5 million, subject to certain adjustments. The proposed sale is subject to terms and conditions set forth in the Transaction Agreement. According to Nasdaq, these include, among other things, the closing of the Merger and closing conditions that are similar to the closing conditions contained in the Merger Agreement, including approval under the HSR Act and the obtaining of other required regulatory approvals with respect to the sale of the institutional brokerage business to Iceland Acquisition Corp.

According to Nasdaq, on April 22, 2005, it entered into a Securities Purchase Agreement (''Securities Purchase Agreement'') with Norway Acquisition SPV, LLC (''Norway SPV'') providing for the sale by Nasdaq to Norway SPV of $205 million aggregate principal amount of the Series A Notes and warrants (''Series A Warrants'') to purchase 2,209,052 shares of Nasdaq's common stock (''Common Stock'') at $14.50 per share. In addition, the Series A Notes will be convertible into Common Stock, subject to certain adjustments and conditions, at a purchase price of $14.50 per share, which would equal 14,137,931 shares. The Series A Notes and the Series A Warrants purchased by Norway SPV are indirectly owned by Hellman & Friedman Capital Partners IV, L.P., H&F International Partners IV–A, L.P., H&F International Partners IV–B, L.P., and H&F Executive Fund IV, L.P. (collectively, the ''H&F Entities'') and Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., and Silver Lake Investors, L.P. (collectively, the ''SLP Entities'') and Integral Capital Partners VI, L.P. and VAB Investors, LLC, (collectively with the SLP Entities, the ''SLP Investors''). Nasdaq will

receive proceeds of $205.0 million from the sale of the Series A Notes and Series A Warrants, less fees and other expenses.

On April 22, 2005, Nasdaq also entered into a Note Amendment Agreement (''Note Amendment Agreement'') with the H&F Entities providing for the exchange by Nasdaq of its $240 million aggregate principal amount of 4.0% Convertible Subordinated Notes due 2006 (''Old Notes'') for $240 million aggregate principal amount of the Series B Notes and warrants (''Series B Warrants'') to purchase 2,753,448 shares of Common Stock at $14.50 per share. The Series B Notes will be convertible into Common Stock, subject to certain adjustments and closing conditions, at a purchase price of $14.50 per share, which would equal 16,551,724 shares. The Old Notes had been convertible at any time during a five-year period into 12,000,000 shares of Nasdaq common stock at a conversion price of $20 per share.

On April 22, 2005, Nasdaq also entered into an Indenture (''Indenture'') with Law Debenture Trust Company of New York, as trustee, governing the terms of the Notes. Nasdaq states that the Notes are senior unsecured obligations of Nasdaq, rank pari passu in right of payment with all existing and any future senior unsecured indebtedness of Nasdaq, and are senior in right of payment to any future subordinated indebtedness of Nasdaq. Under the terms of the Indenture, subject to certain exceptions, Nasdaq will be required to redeem the Series A Notes and Series A Warrants if (i) the Merger Agreement is terminated or (ii) the Merger has not closed by April 22, 2006, but in no event earlier than October 24, 2005. The aggregate redemption price for the Series A Notes and Series A Warrants will be $205.0 million plus any accrued interest on the Series A Notes. Upon the mandatory redemption of the Series A Notes, (i) the Indenture and the Series B Notes will automatically be deemed to be amended to restate, with limited exceptions, the terms of the Old Notes and (ii) the Series B Warrants will be terminated.

Article Fourth

Paragraph C.1. Nasdaq proposes to amend this paragraph of the Certificate to provide that holders of the Notes would enjoy the same rights that are currently granted to holders of the Old Notes, which are being retired. Specifically, Nasdaq states that holders of the Notes would be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq, voting together with the holders of the Common Stock (and of any other shares of capital stock of Nasdaq entitled to vote at a meeting of stockholders) as one class. Each holder of the Notes would be entitled to a number of votes equal to the number of shares of common stock such holder would obtain upon conversion of the principal amount of the Notes held by such person, subject to adjustments as provided in the Notes and the Indenture, dated as of April 22, 2005, between Nasdaq and Law Debenture Trust Company of New York, as trustee, as such Indenture may be amended, supplemented, or otherwise modified from time to time.[4] The amendment would also provide that holders of the Notes shall be deemed to be stockholders and the Notes shall be deemed to be shares of stock solely for the purposes of provisions of the Delaware General Corporation Law and the Certificate that require the vote of stockholders as a prerequisite to corporate action.

Paragraph C.2. By virtue of the amendments to Paragraph C.1. set forth above, the current provision of the Certificate that imposes restrictions on stockholders voting shares and/or Old Notes in excess of 5% of outstanding stock and Old Notes would impose the same restrictions on holders of shares and the Series A Notes and Series B Notes. Any person who beneficially owns shares of common stock and/or Notes in excess of 5% of the then-outstanding shares of common stock (''Excess Shares and/or Notes'') would not be permitted to vote such Excess Shares and/or Notes. As is true under the current Certificate, the calculation of the number of shares of common stock outstanding at any particular time would be made in accordance with the last sentence of SEC Rule 13d–3(d)(1)(i).[5] As a result, shares of common stock that may be acquired by a holder of the Notes through conversion would be deemed to be outstanding for purposes of calculating the voting power owned by such holder.

Paragraph C.6. Currently, this paragraph provides that the 5% voting limitation does not apply to (1) the NASD or its affiliates until such time as the NASD beneficially owns 5% or less of Nasdaq's outstanding common stock, or (2) any other person that the Nasdaq Board of Directors may exempt prior to the time that such person beneficially owns more than 5% of the outstanding shares of common stock. The paragraph also provides that the H&F Entities will be exempted from the 5% voting limitation if the Nasdaq Board of Directors approves an exemption from the 5% voting limitation for any other person (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market). This exemption would not apply to any other person to whom the H&F Entities might transfer Notes and/or common stock with the exception of affiliated investment funds under common management and control.[6] The paragraph also provides that the Board may not approve an exemption from the 5% limit for a registered broker or dealer or an affiliate thereof[7] or a person that is subject to a statutory disqualification under section 3(a)(39) of the Act.[8] In addition, before granting an exemption, the Nasdaq Board must make certain findings with respect to

[4] The conversion rate of the Notes may be adjusted, for example, in the event of a distribution of Nasdaq common stock as a dividend, and in the event of a stock split, reverse split or share combination. *See* Indenture Agreement, Paragraph 15.05, attached as Exhibit 4.3 to Nasdaq's Form 8–K dated April 28, 2005.

[5] 17 CFR 240.13d–3(d)(1)(i).

[6] Nasdaq states that the Amended and Restated Limited Partnership or Limited Liability Company Agreement (each, an ''Agreement'') of each H&F Entity and each SLP Entity provides for the establishment of ''Alternative Investment Structures'' or ''Alternative Investment Vehicles'' for legal, tax, regulatory or other reasons deemed by the General Partner or Manager, as applicable, to be in the best interests of the partnership or company, as applicable. According to Nasdaq, under the Agreements, such alternative structures are required to be substantially identical in all material respects to the funds themselves (*i.e.*, common management and control, common ultimate membership, and substantially identical terms and conditions). Nasdaq states that, in other words, the alternative investment structures or vehicles would have limited partners or members of the same ultimate ownership, including those that are registered broker/dealers, and the partners/members would have the same ultimate interest in portfolio investments in registered broker/dealers. Nasdaq states that, as such, a transfer of Notes or Common Stock between an H&F Entity or an SLP Entity and an alternative investment structure or vehicle would have no meaningful effect in the event the Nasdaq Board grants a waiver under Article Fourth, paragraph C.6.

[7] Nasdaq states that a small number of the limited partners of the H&F Entities are registered broker/dealers or affiliates of registered broker/dealers (''H&F Broker/Dealer investors''). The Certificate provides that Nasdaq may not exempt a registered broker/dealer or an affiliate thereof from the 5% voting limitation. The Certificate defines ''affiliate'' with reference to SEC Rule 12b–2, 17 CFR 240.12b–2, which in turn defines an ''affiliate'' of a specified person as ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' Nasdaq states that the interests of the H&F Broker/Dealer Investors in the H&F Entities are minimal. Moreover, according to Nasdaq, the limited partnership agreements that govern the H&F Entities provide that the limited partners shall take no part in the control or management of the business or affairs of the limited partnership, nor shall they have any authority to act for or on behalf of the limited partnership, nor shall they have any authority to act for or on behalf of the limited partnership.

[8] 15 U.S.C. 78c(a)(39).

the effect of an exemption on enumerated aspects of Nasdaq's regulatory obligations.

The proposed rule amendment would add conforming references to the SLP Entities and would provide that the SLP Entities, along with the H&F Entities, would be exempted from the 5% voting limitation if the Nasdaq Board approves an exemption from the 5% voting limitation for any other person (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market).[9] Nasdaq states that this exemption would not apply to any other person to whom the SLP Entities might transfer Notes and/or common stock, with the exception of affiliated investment funds under common management and control.[10] Nasdaq states that, in the event that the Board determines to grant an exemption from the 5% voting restriction under subparagraph (b) of paragraph 6, such exemption shall not trigger an exemption under subparagraph (c) for the benefit of a broker/dealer. Finally, Nasdaq states that the proposed amendment is designed to ensure that, if in the future the Board raises the voting restriction above 5% for any Broker Affiliate, the H&F Entities and the SLP Entities would automatically receive the same percentage voting rights or the highest percentage voting rights to which their Notes and shares held entitled them at the time.[11]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of sections 15A(b)(2) and (6) of the Act,[12] which require, among other things, that the it be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance with the provisions of the Act, and that its rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the changes proposed to the Certificate are consistent with maintaining the 5% voting limitation that is currently contained in the Certificate, which Nasdaq believes serves the public interest by ensuring that certain individuals and entities cannot gain undue influence over the operations of Nasdaq. Nasdaq states that, in its order previously approving the Certificate, the Commission found that this 5% voting limitation and other limitations affecting the control of Nasdaq fulfill the obligations arising under Sections 15A(b)(2) and (6).[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–099. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–099 and

[9] Nasdaq states that, under the terms of the Transaction Agreement, SLP will acquire the institutional brokerage business (''VAB'') of Instinet, a registered broker/dealer. According to Nasdaq, during the time that SLP continue to own the VAB, the SLP Entities would be deemed to be affiliates of the VAB. Nasdaq states that, in the unlikely event that the Nasdaq Board were considering granting a waiver under Article Fourth, C.6.b, of the Certificate, the Board would be required to consider that such action would trigger an exemption under Article Fourth, C.6.c to the benefit of SLP that would be deemed inconsistent with the provision of the Certificate barring an affiliate of a registered broker or dealer from voting Excess Shares and/or Notes. Nasdaq notes that, in connection with its application for registration as a national securities exchange, Nasdaq filed (i) an amendment to the By-Laws stating that a resolution of the Nasdaq Board to approve an exemption for any person from the five percent voting limitation shall not be permitted to become effective until such resolution has been filed with and approved by the Commission under section 19 of the Act, and (ii) a rule to provide that no member of the Nasdaq exchange or person associated with such a member may beneficially own more than 20% of the outstanding shares of Nasdaq's common stock or Notes. *See* Securities Exchange Act Release No. 52559 (October 4, 2005).

In addition, Nasdaq states that a small number of the limited partners of the SLP Entities are registered broker/dealers or affiliates of registered broker/dealers (''SLP Broker/Dealer Investors''). According to Nasdaq, the interests of the SLP Broker/Dealer Investors in the SLP Entities are minimal. Moreover, Nasdaq states that the limited partnership agreements that govern the SLP Entities provide that the limited partners shall take no part in the control or management of the business or affairs of the limited partnership, nor shall they have any authority to act for or on behalf of the limited partnership

[10] *See supra* note 6.

[11] Nasdaq states that the definition of ''Broker Affiliate'' set forth in paragraph C.6. includes a broker or a dealer or an affiliate thereof.

[12] 15 U.S.C. 78*o*–3(b)(2) and (6).

[13] *See* Securities Exchange Act Release No. 34–42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR–NASD–00–27).

should be submitted on or before November 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5843 Filed 10–21–05; 8:45 am]

BILLING CODE 8010–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of temporary, emergency amendments to sentencing guidelines, policy statements, and commentary.

SUMMARY: Pursuant to (A) section 105 of the Family Entertainment and Copyright Act of 2005, Pub. L. 109–9 (the ''FECA''); and (B) the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109–76 (pertaining to the directive in section 6703 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458), the Commission hereby gives notice of temporary, emergency amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the temporary, emergency amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of October 24, 2005, for the emergency amendments.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The Commission must promulgate temporary, emergency amendments to implement the FECA directives by October 24, 2005, and to implement the directive in United States Parole Commission Extension and Sentencing Commission Authority Act of 2005 by November 27, 2005. The statutory deadlines for the promulgation of the temporary, emergency amendments, in conjunction with the Commission's public meeting schedule (the promulgation of such amendments must occur in a public meeting) and pressing needs of other Commission business, made it impracticable to publish proposed temporary, emergency amendments in the **Federal Register** in order to provide an opportunity for public comment. The Commission therefore had good cause not to publish proposed amendments before their effective date. *See* 5 U.S.C. 553(b), (d)(3).

The temporary, emergency amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 105 of Pub. L. 109–9; and Pub. L. 109–76.

Ricardo H. Hinojosa,

Chair.

1. *Amendment:* Section 2B5.3(b) is amended by redesignating subsections (b)(2) through (b)(4) as subsections (b)(3) through (b)(5), respectively; and by inserting after subsection (b)(1) the following:

''(2) If the offense involved the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution, increase by 2 levels.''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 1 by striking '' 'Uploading' '' and all that follows through ''the infringing item.'' and inserting the following:

'' 'Uploading' means making an infringing item available on the Internet or a similar electronic bulletin board with the intent to enable other persons to (A) download or otherwise copy the infringing item; or (B) have access to the infringing item, including by storing the infringing item in an openly shared file. 'Uploading' does not include merely downloading or installing an infringing item on a hard drive on a defendant's personal computer unless the infringing item is placed in an openly shared file.

'Work being prepared for commercial distribution' has the meaning given that term in 17 U.S.C. 506(a)(3).''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 2 in subdivision (A) by inserting after subdivision (v) the following:

''(vi) The offense involves the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution. In a case involving such an offense, the 'retail value of the infringed item' is the value of that item upon its initial commercial distribution.'';

and by inserting after subdivision (D) the following:

''(E) Indeterminate Number of Infringing Items.—In a case in which the court cannot determine the number of infringing items, the court need only make a reasonable estimate of the infringement amount using any relevant information, including financial records.''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended by striking Note 3; and by redesignating Notes 4 and 5 as Notes 3 and 4, respectively.

Appendix A (Statutory Index) is amended by inserting after the line reference to ''18 U.S.C. 2319(A)'' the following: ''18 U.S.C. 2319B 2B5.3''.

Reason for Amendment: This proposed amendment implements the directive in section 105 of the Family Entertainment and Copyright Act of 2005, Pub. L. 109–9. The directive, which requires the Commission to promulgate an amendment under emergency amendment authority by October 24, 2005, instructs the Commission to ''review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes * * *''

''In carrying out [the directive], the Commission shall—

(1) Take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements * * * are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) Determine whether to provide a sentencing enhancement for those convicted of the offenses [involving intellectual property rights], if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) Determine whether the scope of 'uploading' set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) Determine whether the sentencing guideline and policy statements applicable to the offenses [involving intellectual property rights] adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.''

Pre-Release Works

The proposed amendment provides a separate two-level enhancement if the offense involved a pre-release work. The enhancement and the corresponding definition use language directly from 17 U.S.C. 506(a) (criminal infringement). The amendment adds language to Application Note 2 that explains that in cases involving pre-release works, the infringement amount should be determined by using the retail value of the infringed item, rather than any premium price attributed to the infringing item because of its pre-release status. The proposed amendment addresses concerns that distribution of an item before it is legally available to the consumer is more serious conduct than distribution of other infringing items and involves a harm not addressed by the current guideline.

Uploading

The concern underlying the uploading directive pertains to offenses

[14] 17 CFR 200.30–3(a)(12).

in which the copyrighted work is transferred through file sharing. The proposed amendment builds on the current definition of ''uploading'' to include making an infringing item available on the Internet by storing an infringing item in an openly shared file. The proposed amendment also clarifies that uploading does not include merely downloading or installing infringing items on a hard drive of the defendant's computer unless the infringing item is in an openly shared file. By clarifying the definition of uploading in this manner, Application Note 3, which is a restatement of the uploading definition, is no longer necessary and the proposed amendment deletes the application note from the guideline.

Indeterminate Number

The proposed amendment addresses the final directive by amending Application Note 2, which sets forth the rules for determining the infringement amount. The proposed note provides that the court may make a reasonable estimate of the infringement amount using any relevant information including financial records in cases in which the court cannot determine the number of infringing items.

New Offense

Finally, the proposed amendment provides a reference in Appendix A (Statutory Index) for the new offense at 18 U.S.C. 2319B. This offense is proposed to be referenced to § 2B5.3.

2. *Amendment:* Section 2J1.2(b) is amended by striking subdivision (1) and inserting the following:

''(1) (Apply the greater):

(A) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by 8 levels.

(B) If (i) defendant was convicted under 18 U.S.C. 1001 or 1505; and (ii) the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable, increase by 12 levels.''.

The Commentary to § 2J1.2 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 1503'' and inserting the following:

''18 U.S.C. 1001 when the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable, 1503''.

The Commentary to § 2J1.2 captioned ''Application Notes'' is amended in Note 1 by inserting after ''Definitions.—For purposes of this guideline:'' the following:

'' 'Domestic terrorism' has the meaning given that term in 18 U.S.C. 2331(5).

'International terrorism' has the meaning given that term in 18 U.S.C. 2331(1).''.

The Commentary to § 2J1.2 captioned ''Application Notes'' is amended by striking Note 2 and inserting the following:

''2. Chapter Three Adjustments.—

(A) Inapplicability of Chapter Three, Part C.—For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation, prosecution, or sentencing of the obstruction of justice count.

(B) Interaction with Terrorism Adjustment.—If § 3A1.4 (Terrorism) applies, do not apply subsection (b)(1)(B).''.

Appendix A (Statutory Index) is amended in the line referenced to ''18 U.S.C. 1001'' by inserting '', 2J1.2 when the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable'' after 2B1.1''.

Reason for Amendment: This amendment implements section 6703 of the Intelligence Reform and Prevention Act of 2004 (the ''Act''), Pub. L. 108–458. Section 6703(a) provides an enhanced penalty of not more than 8 years of imprisonment for offenses under sections 1001(a) and 1505 of title 18, United States Code, ''if the offense involves international or domestic terrorism (as defined in section 2331).'' Section 6703(b) requires the Sentencing Commission to amend the sentencing guidelines to provide for ''an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title.'' The Commission is directed under section 3 of the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109–76, to promulgate this amendment as an emergency amendment.

First, the amendment references convictions under 18 U.S.C. 1001 to 2J1.2 (Obstruction of Justice) ''when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable.'' It also adds a new specific offense characteristic at § 2J1.2(b)(1)(B) providing for a 12 level increase for a defendant convicted under 18 U.S.C. 1001 and 1505 ''when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable.'' This 12 level increase is applied in lieu of the current 8 level increase for injury or threats to persons or property. The increase of 12 levels is intended to provide parity with the treatment of federal crimes of terrorism within the limits of the 8 year statutory maximum penalty. It is also provided to ensure a 5 year sentence of imprisonment for offenses that involve international or domestic terrorism.

Second, the amendment adds to Application Note 1 definitions for ''domestic terrorism'' and ''international terrorism,'' using the meanings given the terms at 18 U.S.C. 2331(5) and (1), respectively.

Third, the amendment adds to Application Note 2 an instruction that if § 3A1.4 (Terrorism) applies, do not apply § 2J1.2(b)(1)(B).

[FR Doc. 05–21211 Filed 10–21–05; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Platinum Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005–10–13); Dockets OST–2005–21286 and OST–2005–21287.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Platinum Airlines, Inc. fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 31, 2005.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–2005–21286 and OST–2005–21287 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: October 17, 2005.

Susan McDermott,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–21199 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of U.S. Helicopter Corporation for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005–10–12) Docket OST–2005–20405.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding U.S. Helicopter Corporation fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than October 31, 2005.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2005–20405 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: October 17, 2005.

Michael W. Reynolds,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–21200 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held November 8, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The revised agenda will include:

- November 8:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Publication Consideration/Approval:
  - Final Draft, Revised DO–281, Minimum Operational Performance Standards for Aircraft VDL Mode 2 Physical, Link and Network Layer, RTCA Paper No. 198–05/PMC–413, prepared by SC–172.
  - Final Draft, Revised DO–271B, Minimum Operational Performance Standards for Aircraft VDL Mode 3 Transceiver Operating in the Frequency Range 117.975–137.000 MHz, RTCA Paper No. 159–05/PMC–404, prepared by SC–172.
  - Final Draft, Revised DO–186A, Minimum Operational Performance Standards for Airborne Radio Communications Equipment, RTCA Paper No. 160–05/PMC–405, prepared by SC–172.
  - Final Draft, Integrated Modular Avionics (IMA) Development Guidance and Certification Considerations, RTCA Paper No. 131–05/PMC–402, prepared by SC–200.
  - Final Draft, Safety Analysis of Proposed Change to TCAS RA Reversal Logic, RTCA Paper No. 199–05/PMC–414, prepared by SC–147.
- Discussion:
- SC–147—Traffic Alert and Collision Avoidance System.
  - Discussion dependent on Agenda Item 3E results.
  - Review/Approve revised Terms of Reference for additional work to revise DO–185A, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System II (TCAS II) Airborne Equipment.
- SC–203—Unmanned Aircraft Systems.
  - Review Committee Status.
  - Review/Approve revised Terms of Reference.
- SC–206—Aeronautical Information Services (AIS) Data Link.
  - Review Committee Status.
  - Review/Approve revised Terms of Reference.
- Cabin Management Systems—Discussion Possible New Committee.
  - Review/Approve Terms of Reference/Leadership.
  - Special Committee chairman's Reports.
- Action Item Review:
- SC–205—Software Considerations.
  - Review Committee Status.
  - Review/Approve revised Terms of Reference of additional work to modify RTCA DO–278—Guidelines for Communications, Navigation, Surveillance, and Air Traffic Management Systems Software Integrity Assurance.
  - Synthetic Vision Systems (SVS)—Discussion—Possible New Committee Request.
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 13, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–21145 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Record of Decision: Washington County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability of the Record of Decision following a Final Environmental Impact Statement for transportation improvements in Washington County, Utah.

SUMMARY: The FHWA is issuing this notice to advise the public that a Record of Decision (ROD) has been made following a Final Environmental Impact Statement prepared for the Southern Corridor project within Washington County, Utah. The ROD approves a location proposed for transportation improvements for the Southern Corridor project Washington County, Utah. The Southern Corridor Study Area includes an area in southern Washington County south and southeast of Interstate 15 (I–15) and State Route 9 (SR 9) including the cities of St. George, Washington, and Hurricane. The Selected Alternative (2800 West Alternative) includes a new interchange with I–15 at Reference Post 2 (Atkinville) and a new four-lane highway extending 26 miles to the intersection of 2800 West with SR 9. Selection of the Preferred Alternative was based on the best overall public interest to provide a safe and efficient transportation system and the social, economic, and environmental impacts. In addition, the project team considered public and resource agency input and city council recommendations or resolutions regarding the project.

This project requires Federal approval of a proposed new Interstate access and Federal Highway Administration funding as authorized by Title 23 of the United States Code. Consequently, pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), the Federal Highway Administration (FHWA) in coordination with the Utah Department of Transportation (UDOT), prepared an Environmental Impact Statement (EIS) for the project's impact on the human environment. The Final EIS (FEIS) was issued on April 22, 2005.

Pursuant to Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [23 U.S.C. 139(l)] any person or entity wishing to file a claim for judicial review challenging this decision must do so within 180 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gregory S. Punske, P.E., Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone (801) 963–0182; or Tamerha Maxwell, Project Manager, Utah Department of Transportation, Cedar District, 1470 North Airport Road, Cedar City, UT 84721–1009, Telephone: (435) 865–5511. The FEIS is available for review at the addresses mentioned above and can be viewed and downloaded from the project Web site *http://www.udot.utah.gov/sc/* or viewed at public libraries in the project area. A copy of the ROD is available upon written request from the Federal Highway Administration at the address shown above.

Comments or questions concerning this proposed action and the ROD should be directed to the FHWA at the address provided above.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations impending Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.]

Issued on October 18, 2005.

Gregory S. Punske,

Environmental Program Manager, Salt Lake City, Utah.

[FR Doc. 05–21178 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21952]

Agency Information Activities; Clearance of a New Information Collection: Assessing the Effectiveness of the Arbitration Program as a Means of Settling Household Goods Disputes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Request for public comments and Office of Management and Budget (OMB) approval of a new information collection.

SUMMARY: This notice seeks comments from the public regarding the need for FMCSA to collect information by using three new surveys to assess how household goods (HHGs) carriers and shippers (persons who arrange for the transportation of, or those who move, household goods) are satisfied with current arbitration dispute resolution procedures. The information collection (IC) meets the statutory requirements of the Interstate Commerce Commission Termination Act of 1995 (ICCTA). This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the proposed information collection, to find ways to minimize the burden on household goods shippers and carriers, to find ways to enhance the quality of information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on household goods shippers and carriers.

DATES: Please submit comments on or before December 23, 2005.

ADDRESSES: You may submit written comments to the docket by any of the following methods:

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401 on plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access: For copies of this notice or other materials in the docket, you may contact the Dockets Facility by phone (202–366–9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search*. Then type in the last four digits of the docket number shown in the heading of this notice, and click on ''Search.''

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to *http://dms.dot.gov*.

Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Ruban, (202) 385–2400, Commercial Enforcement Division (MC–ECC), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct interstate transportation services only if they are registered pursuant to 49 U.S.C. 13901. As a condition of registration under 49 U.S.C. 13902 and 13903 (ICCTA (Pub. L. 104–88, 109 Stat. 803) (December 29, 1995); (49 U.S.C. 14708 (a)), a carrier providing transportation of household goods subject to jurisdiction under subchapter

I or III of chapter 135, title 49, U.S.C., must agree to offer arbitration to HHGs shippers as a means of settling disputes concerning damage or loss to the household goods transported. Under 49 U.S.C. 14708(g)), the Secretary is required to complete an assessment of the dispute settlement program and if, after notice and comment, it is determined that changes to the program are necessary, the Secretary will implement such changes and provide a report to Congress on the changes made. The General Accountability Office (GAO) recommended such an assessment in their March 2001 review (Report Number GAO–01–318). The Secretary has delegated authority pertaining to these registrations and arbitration matters to FMCSA.

Since the passage of the ICCTA, the level of Federal involvement in mitigating interstate HHGs disputes has been significantly reduced. FMCSA is responsible for overseeing the arbitration process, but has provided only limited attention, staffing, and resources to this non-safety related function. Shippers of household goods unhappy about loss or damage to property during their move with an interstate HHGs carrier may follow one of several paths to settle disputes: (1) File a complaint with consumer assistance organizations or FMCSA; (2) agree to participate in a binding arbitration process with the American Moving and Storage Association (AMSA) or some other organization that runs an arbitration process; or (3) pursue civil litigation. Each carrier providing transportation of household goods must agree to offer to shippers of HHGs neutral arbitration, as well as a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and disclosure of the legal effects of election to utilize arbitration and inform shippers about the availability of this process to resolve complaints (49 U.S.C. 14708 (a) and (b)(2)). As mandated by Congress, FMCSA is required to determine the effectiveness of arbitration as a means of settling HHGs disputes from the point of view of both interstate household goods shippers and carriers. The increasing number of consumer complaints related to HHGs shipments received by FMCSA and other consumer protection organizations demonstrates the current need for such an assessment.

Type of Information Collection Request: New collection.

Title of Information Collection: Assessing the Effectiveness of the Arbitration Program as a Means of Settling Household Goods Disputes.

OMB Approval Number: 2126–XXXX.

Frequency: Annually.

Use: This collection will be used by FMCSA to assess the effectiveness of the arbitration program as a means of settling disputes from the perspective of the household goods shippers and carriers.

Estimated Number of Respondents: 300 [100 respondents × 3 surveys = 300 respondents].

Respondents: Household goods shippers and carriers.

Total Annual Hours Requested: The estimated total annual burden is 150 hours for the information collection comprised of three arbitration satisfaction surveys—one for HHGs carriers, one for HHGs shippers who have used arbitration, and one for HHGs shippers who have filed claims (or complaints with FMCSA). Each survey requires 100 responses to achieve statistical significance of the results [100 respondents per survey × ½ hour per respondent × 3 surveys = 150 hours].

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; 49 U.S.C. 13901, 13902, 13903, 13904 and 14708; the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803 (December 29, 1995)); and 49 CFR § 1.73.

Issued on: October 17, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–21202 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2005–21711]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to grant exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for 40 individuals. The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: This decision is effective October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On August 19, 2005, the FMCSA published a notice of receipt of exemption applications from 40 individuals, and requested comments from the public (70 FR 48797). The 40 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Roy L. Allen, Calvin D. Atwood, Gregory W. Babington, Lennie D. Baker, Jr., John E. Breslin, Arturo Cardozo, William P. Doolittle, Steve R. Felks, William M. Gales, III, Jonathan M. Gentry, John N. Guilford, Benny D. Hatton, Jr., Robert W. Healey, Jr., Nathaniel H. Herbert, Jr., Thomas D. Lambert, Thomas (Tom) W. Markham, Eugene P. Martin, Raul Martinez, Joseph L. Mast, Randy G. McCloud, Richard L. McEwen, David McKinney, Ralph L. Means, Kevin L. Moody, Woody M. Moore, William G. Mote, Charles W. Mullenix, James R. Murphy, Kenneth R. Murphy, Gary S. Partridge, Nathan (Nate) D. Peterson, John N. Poland, Neal A. Richard, Chris A. Ritenour, Brent L. Seaux, Gerald M. Smith, James T. Smith, Nicholas J. Turpin, Gary M. Wolff, and George R. Zenor.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 40 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on September 19, 2005. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that

person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 40 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but thirteen of the applicants were either born with their vision impairments or have had them since childhood. The thirteen individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 32 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 40 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 45 years. In the past 3 years, four of the drivers have had convictions for traffic violations. Three of these convictions were for speeding. One involved a collision but the driver did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 19, 2005, notice (70 FR 48797). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors '' such as age, sex, geographic location, mileage driven and conviction history '' are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 40 applicants receiving an exemption, we note that the applicants have had only one collision and three speeding violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These

conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 40 applicants listed in the notice of August 19, 2005 (70 FR 21711).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 40 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

An individual, wishing to remain anonymous, commented that they have been driving with a vision exemption for several years safely and does not believe that vision impaired drivers pose any additional danger to the public because of their vision impairment. This individual believes drivers who are granted a vision exemption perform better than those with normal vision, and hopes that those who oppose the Federal exemption program understand that its mere existence is to focus on safety on the highways.

The second comment was received by Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. §§ 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions. The issues raised by Advocates were addressed at length in 70 FR 16887 (April 1, 2005). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

Based upon its evaluation of the 40 exemption applications, the FMCSA exempts Roy L. Allen, Calvin D. Atwood, Gregory W. Babington, Lennie D. Baker, Jr., John E. Breslin, Arturo Cardozo, William P. Doolittle, Steve R. Felks, William M. Gales, III, Jonathan M. Gentry, John N. Guilford, Benny D. Hatton, Jr., Robert W. Healey, Jr., Nathaniel H. Herbert, Jr., Thomas D. Lambert, Thomas (Tom) W. Markham, Eugene P. Martin, Raul Martinez, Joseph L. Mast, Randy G. McCloud, Richard L. McEwen, David McKinney, Ralph L. Means, Kevin L. Moody, Woody M. Moore, William G. Mote, Charles W. Mullenix, James R. Murphy, Kenneth R. Murphy, Gary S. Partridge, Nathan (Nate) D. Peterson, John N. Poland, Neal A. Richard, Chris A. Ritenour, Brent L. Seaux, Gerald M. Smith, James T. Smith, Nicholas J. Turpin, Gary M. Wolff, and George R. Zenor, from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: October 18, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–21203 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collection of Information by the Office of Management and Budget

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA hereby gives notice that it has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). FRA requests that OMB authorize the collection of information identified below on or before October 31, 2005, for a period of 180 days after the date of issuance of this notice in the **Federal Register**. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling FRA's clearance officers, Robert Brogan (telephone number (202) 493–6292) or Victor Angelo (telephone number (202) 493–6470; these numbers are not toll-free), or by contacting Mr. Brogan via facsimile at (202) 493–6270 or Mr. Angelo via facsimile at (202) 493–6170, or via e-mail by contacting Mr. Brogan at *robert.brogan@fra.dot.gov.* or by contacting Mr. Angelo at *victor.angelo@fra.dot.gov.* Comments and questions about the ICR identified below should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for FRA.

Title: FRA Emergency Order No. 24, Notice No. 1.

REPORTING BURDEN

Emergency order item No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
(1)—Instruction On Railroad Operating Rule—Operation of manual main track in non-signal territory.	685 Railroads; 100,000 employees.	100,000 instruction sessions.	60 minutes	100,000	$4,700,000.
—Instruction Records	685 Railroads	100,000 records	2 minutes	3,333	126,654.
(2) Hand-Operated Main Track Switches—Confirmation of Switch Position.	6,000 Dispatchers	60,000 verbal confirmations.	30 seconds	500	20,500.
—Review of SPAF by Train Dispatcher.	6,000 Dispatchers	15,000 reviews	10 seconds	42	1,974.
(3) Switch Position Awareness Form (SPAF).	100,000 employees.	20,000 forms	3 minutes	1,000	47,000.
(4) Job Briefings	100,000 employees.	60,000 briefings	1 minute	1,000	47,000.
(5) Radio Communication—Crewmember communication with engineer.	100,000 employees.	60,000 verbal communications.	15 seconds	250	11,750.
—Notation of Inoperable Radio on SPAF.	900,000 Crew members.	500 form entries	5 seconds	3	141.
(6) Operational Tests and Inspections	685 Railroads	Burden Covered Under OMB No. 2130–0035.	Burden Covered Under OMB No. 2130–0035.	Burden Covered Under OMB No. 2130–0035.	Burden Covered Under OMB No. 2130–0035.
(7) Distribution of Emergency Order—Copies to Employees.	685 Railroads; 100,000 Employees.	100,000 copies	2 seconds	56	2,128.
—Written Receipt and Acknowledgment of Copy.	685 Railroads; 100,000 Employees.	100,000 receipts + 100,000 records.	1 second + 1 second.	56	2,380.
(8) Relief—Petitions For Special Approval.	685 Railroads	10 petitions	60 minutes	10	380.

Form Number(s): N/A.

Respondent Universe: 685 Railroads; 100,000 Railroad Employees.

Frequency of Submission: One-time; On occasion.

Total Responses: 715,510.

Total Annual Estimated Burden: 106,250 hours.

Status: Emergency Review.

Description: FRA has determined that public safety compels the issuance of Emergency Order No. 24 and necessitates this collection of information in order that railroads modify their operating rules and take certain other actions necessary to ensure that their employees who operate hand-operated main track switches in non-signaled territory restore the switches to their proper (normal) position after use. The Emergency Order is intended to reduce the risk of serious injury or death both to railroad employees and the general public.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on October 19, 2005.

Belinda Ashton,

Acting Director, Office of Budget, Federal Railroad Administration.

[FR Doc. 05–21250 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 24; Docket No. FRA–2005–22796, Notice No. 1]

Emergency Order Requiring Special Handling, Instruction and Testing of Railroad Operating Rules Pertaining to Hand-Operated Main Track Switches

SUMMARY: The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order (EO) requiring railroads to modify their operating rules and take certain other actions necessary to ensure that railroad employees who dispatch non-signaled territory or who operate hand-operated main track switches (switches) in non-signaled territory, ensure the switches are restored to their proper (normal) position after use. For purposes of this EO, ''employee'' means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this EO. This EO is intended to reduce the risk of serious injury or death both to railroad employees and the general public.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

AUTHORITY: Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may immediately impose ''restrictions and prohibitions * * * that may be necessary to abate the situation.'' (Ibid.)

BACKGROUND: FRA's regulations, at 49 CFR part 217, require each railroad to instruct its employees on the meaning and application of its code of operating rules, and to periodically test its employees to determine their level of compliance. Railroad operating rules pertaining to the operation of switches provide that the normal position for a main track switch is lined and locked for movement on the main track when not in use. Another related operating rule provides that, where trains or engines are required to report clear of the main track, such a report must not be made until the switch and derail, if provided, have been secured in their normal position. Where no signal or other system is in service that indicates through wayside or cab signals, or both, the possibility that a main track switch may not be in its normal position, compliance with these railroad operating rules is the critical element in ensuring route integrity for main track movements.

There may be more than one cause that contributes to non-compliance with these important operating rules. One recurrent scenario of non-compliance occurs when a train crew has exclusive authority to occupy a specific track segment until they release it for other movements and that train crew goes off duty without lining and locking a hand-operated main track switch in its normal position. In that scenario, the train crew's mistake in leaving a main track switch lined for movement to a secondary track was the last act or omission that resulted in a catastrophic accident.

During the years 2000 through 2003, railroads reported no more than three accidents per year that were caused by improperly lined hand-operated main track switches in non-signaled territory and one of the most serious of those wrecks was caused by vandalism. During that four year period, there were ten total injuries and two fatalities (all to railroad employees).

In comparison, in 2004 there was a sharp increase in the frequency and severity of collisions resulting from improperly lined main track switches as shown on the attached charts. In 2004, there were a total of eight accidents resulting in eight injuries to railroad employees. The increase in the number of accidents and injuries did not go unnoticed by the industry as some railroads amended their operating rules to address this issue.

On January 6, 2005, the issue of improperly lined main track switches became national news as the media reported on a catastrophic accident that occurred in Graniteville, South Carolina. This accident occurred when a Norfolk Southern Railway Company (NS) freight train was unexpectedly diverted from the main track onto an industrial lead. The NS train struck a standing train on the industrial lead, derailing three locomotives and 16 cars. The collision resulted in the rupture of a tank car containing chlorine, fatal injuries to eight citizens and one railroad employee, the evacuation of 5,400 local residents, and injuries to 630 people. Damages to equipment and track totaled more than $2.3 million. FRA immediately began deliberating on a course of action to prevent this type of accident. [The National Transportation Safety Board (NTSB) is investigating this accident, and will officially determine the probable cause of the accident which FRA is expressly not doing.]

On January 8, 2005, a BNSF Railway Company (BNSF) freight train was unexpectedly diverted onto an industrial track in Bieber, California. The BNSF train struck two loaded grain cars, derailing seven locomotives and 14 cars. Two railroad employees were injured. Damages to equipment and track totaled more than $1 million.

FRA decided to start a rulemaking proceeding and took action on January 10, 2005, to abate the safety risks during the proceeding by issuing Safety Advisory 2005–01, Position of Switches in Non-Signaled Territory (Safety Advisory). The issuance of a safety advisory is an opportunity for the agency to inform the industry and the general public regarding a safety issue, to articulate agency policy, and to make recommendations. FRA explained in the Safety Advisory that ''[a] review of FRA's accident/incident data shows that, overall, the safety of rail transportation continues to improve. However, FRA has particular concern that recent accidents on Class I railroads in non-signaled territory were caused, or apparently caused, by the failure of railroad employees to return manual (hand-operated) main track switches to their normal position, i.e., lined for the main track, after use. As a result, rather than continuing their intended movement on the main track, trains approaching these switches in a facing-point direction were unexpectedly diverted from the main track onto the diverging route, and consequently derailed.''

FRA also explained what we could do if the emergency situation did not abate. That is, in the Safety Advisory, FRA stated that we would consider ''the need for any additional action to address this situation, such as regulatory action or additional advisories. We are considering the form that any additional action might take, its specific content, and any necessary variations based on differing types of operations * * *. We are committed to taking whatever action appears necessary to prevent any further death or serious injury that might arise from additional failures to comply with the basic operating rules concerning the proper positioning of main track switches.''

FRA's decision to make recommendations was based in part on the fact that several railroads had already initiated voluntary actions to enhance the applicable railroad operating rules during the last few months of 2004. FRA wanted to give all railroads the same opportunity to self-correct in the expectation that it would suffice to ameliorate this problem until, as discussed below, a rule could be issued. Furthermore, the purpose of the Safety Advisory was to heighten employee awareness of the importance of restoring main track switches to their normal position in non-signaled territory. A key element of the Safety Advisory was to promote and enhance intra-crew communication about the operation and position of main track switches.

With the exception of a similar accident that occurred on CSX Transportation (CSX) in Banks, Alabama, on January 11, 2005, one day after publication of the Safety Advisory, and an accident, with relatively minor results, that was caused by an employee of a contractor to the Nashville and Eastern Railroad (NERR), in Mt. Juliet, Tennessee on February 23, 2005, there was a respite of nearly six months in accidents resulting from improperly lined main track switches in non-signaled territory. During this respite, FRA began a rulemaking on this subject and other human factor causes of accidents. For about the last decade, FRA has sought recommendations from its standing Federal advisory committee on most of the subjects on which FRA proposed to issue substantive safety rules. In FRA's view, this process produces better rules because it generates more substantive participation in rulemakings from experts representing both management and labor, and yields better and faster compliance with the final rule from the regulated community which helped craft it. On May 18, 2005, at the first opportunity to address this subject, the Railroad Safety Advisory Committee (RSAC or Committee) agreed to take up the task of reviewing how to reduce human factor caused train accidents/incidents and related employee injuries. The full Committee formed a smaller

Operating Rules Working Group (Working Group) comprised of people expert in this subject to do the bulk of the work in formulating recommendations to complete the task, and a target date of February 10, 2006, was established for the Working Group to report its findings and recommendations back to the full RSAC.

Since May, the Working Group has met twice and progress toward a consensus recommendation has been made. One of the key elements in those discussions is the proper operation of main track switches in non-signaled territory. Through the Working Group's activities, FRA has already heard comments on this issue from organizations representing every affected party within the industry. The Working Group has three additional meetings scheduled in order to meet the February deadline for recommendations. FRA's goal is to publish a proposed rule in 2006, and a final rule soon thereafter.

Working with a Federal advisory committee to generate consensus recommendations takes many meetings over a number of months, and rulemaking can take many more months. During the time it takes to accomplish these tasks, new accidents can occur that require more immediate action. That has happened here. After six months, the Safety Advisory no longer worked well enough to prevent more accidents.

First, in July 2005, two accidents, with relatively minor results occurred. As the results were minor, and, FRA believed awareness was heightened due to the publication of the Safety Advisory and the RSAC's activities, FRA did not identify an emergency situation in July. The following is a synopsis of those two accidents.

• July 7, 2005—Willamette & Pacific Railroad (WPRR), Sheridan, Oregon—a maintenance of way work train was parked in a siding and the switch was left lined for the siding. A local freight train, operating at a speed of 12 miles per hour (mph), was unintentionally diverted into the siding due to an improperly lined switch. The freight train struck the lead locomotive of the standing work train. Both locomotives derailed.

• July 9, 2005—Dakota, Minnesota and Eastern Railroad (DME), Florence, Minnesota—the crew of an eastward BNSF light locomotive consist departing DME property and returning to BNSF trackage, failed to restore the junction switch to its normal position. Subsequently, an eastward DME train, operating at a speed of 38 mph, encountered an improperly lined switch. As a result, the lead locomotive derailed and was destroyed.

Beginning six weeks later, three more accidents occurred with more serious results. The three recent accidents described below occurred over a 28-day period and clearly demonstrate the need for additional action beyond the Safety Advisory, as these three collisions, overall, resulted in fatal injuries to one railroad employee, non-fatal injuries to eight additional railroad employees, an evacuation of civilians, and railroad property damage of approximately two million dollars. Furthermore, each of these accidents could have been worse, as each had the potential for additional deaths, injuries, property damage or environmental damage. Two of the accidents could have involved catastrophic releases of hazardous materials as these materials were present in at least one of the train consists that collided.

• August 19, 2005—Kansas & Oklahoma Railroad (KO), Nickerson, Kansas—an eastward loaded grain train was operating at a speed of 26 mph when it encountered an improperly lined switch at the west end of the siding. The train struck a standing cut of cars, resulting in the derailment of two locomotives and two freight cars. The locomotive engineer was severely injured.

• August 21, 2005—Union Pacific Railroad (UP), Heber, California—an eastward freight train operating at a speed of 30 mph encountered an improperly lined switch at the west end of a siding. The train struck a standing cut of cars, resulting in the derailment of two locomotives and two freight cars. The control compartment on the lead locomotive was completely destroyed. The three crewmembers survived only by quickly throwing themselves on the floor of the locomotive immediately before impact. Considering the destruction to the locomotive control compartment, the crewmembers likely would have been seriously injured or killed, but for their quick action. The locomotive engineer, conductor and trainman were taken to a local hospital where they were treated and released.

• September 15, 2005—UP, Shepherd, Texas—a southward freight train operating at a speed of 36 mph, collided head-on with a northward UP freight train that was standing in a siding. The collision occurred when the southward train encountered an improperly lined switch at the north end of the siding. The southward train struck the standing train and derailed two locomotives and 13 cars. The two locomotives and the four leading cars of the standing train were also derailed. The engineer of the standing train was fatally injured and four other crewmembers were injured. Eleven of the 13 cars contained hazardous materials. Although, no hazardous materials release occurred, a precautionary evacuation of 500 people was ordered by local authorities for a period of 12 hours.

Each of the accidents that precipitated the Safety Advisory and this EO either resulted in, or had the potential to result in, serious injuries, fatalities, and catastrophic releases of hazardous materials. As previously stated, the industry achieved only a temporary respite from accidents of this type after the Safety Advisory's publication, instead of the long-term solution that FRA expected. The sudden and recent occurrence of five of this type of accident is a clear indication that the Safety Advisory has lost its effectiveness. Only with additional action can FRA secure compliance with these important railroad operating rules. FRA considered issuing another Safety Advisory, but that might at best only provide another temporary pause. As described above, FRA is currently seeking a permanent solution through rulemaking. The issuance of this EO is intended to accomplish what the Safety Advisory could not: Implement safety practices that will abate the emergency until FRA can complete rulemaking after receiving the RSAC's expert advice.

Finding and Order: Collisions, deaths and injuries resulting from improperly lined main track switches began in 2004 to rise very sharply as shown on the attached charts. FRA's issuance of a Safety Advisory in early January 2005, recommending practices designed to prevent such events, led to a nearly six month respite. The sharply rising and accelerating trend of collisions, deaths and injuries resulting from improperly lined main track switches, which the Safety Advisory abated only temporarily, constitutes an emergency situation involving a hazard of death or personal injury which FRA must act to stop.

Even considering the nearly six-month respite from January 12 through July 6, the Nation has experienced more accidents resulting from improperly lined hand-operated switches on main track in non-signaled territory than it experienced in any of the previous five years. To date in 2005, there were nine accidents resulting in 640 injuries and 10 fatalities. Given the cloud of chlorine that covered much of Graniteville, South Carolina, on January 6, 2005, as a result of one of these accidents, it is fortuitous that the death toll is not

significantly higher; in addition, the same could be said for the Nickerson, Kansas and Shepherd, Texas accidents that occurred on August 19, 2005 and September 15, 2005 respectively as trains involved in those accidents were transporting tank cars containing hazardous materials. Any reasonable extrapolation of the current trends of wrecks, deaths, and injuries makes clear that more accidents of this type will occur in the absence of this EO, that many of those accidents will result in injuries or deaths, or both, that a significant percentage of those wrecks will involve trains carrying hazardous materials, and that each of those wrecks will pose a significant risk that a large amount of hazardous material will be released. Considering the severity of accidents related to improperly lined hand-operated main track switches in non-signaled territory, the prevalence of hazardous materials on trains in non-signaled territory, and the recent and dramatic increase in the rate of occurrence of these accidents, decisive action is necessary now.

FRA concludes that non-compliance with certain operating rules and practices on the Nation's railroads concerning the proper positioning of hand-operated main track switches in non-signaled territory lacking the safeguards of facing point protection is a combination of unsafe conditions and practices which causes an emergency situation involving an imminent and unacceptable hazard of death or personal injury. FRA further concludes that reliance solely on employee compliance with railroad operating rules related to the operation of hand-operated main track switches in non-signaled territory, without a Federal enforcement mechanism, is inadequate to protect the public safety.

FRA also considered whether to apply this EO nationwide or limit it to those railroads that have had recent accidents. A review of the 2005 accidents reveals that four major railroads and four other, smaller railroads were involved in accidents. On June 12, 2004, an alert Amtrak engineer made a full service application of the train brake and stopped three car lengths into a siding, thereby avoiding a potentially serious accident on CSX track in Apex, North Carolina. Going back to 2000, five additional smaller railroads were involved in accidents. Over the last six years, 41% of this type of accident has had at least one train consist involved that was carrying hazardous material, i.e., 11 out of 27 accidents. Given the wide distribution of the accidents across various railroads, the similarity of physical conditions and operating practices among railroads of all sizes nationwide, the high number of new and inexperienced operating employees on many railroads, and the very high potential for serious harm, limiting the EO's effectiveness to only a small number of railroads would be an unjustifiable risk to public safety and the safety of railroad employees.

Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is hereby ordered that each railroad and its employees, including employees of a contractor to a railroad, who operate hand-operated main track switches in non-signaled territory and who dispatch non-signaled territory, do, at a minimum, the following:

(1) Instruction

Each employee subject to this EO shall be instructed on this EO and the railroad's operating rules relating to the operation of hand-operated main track switches in non-signaled territory. The subject matter of the instruction shall include, but not be limited to:

- Operation of main track switches;
- Position of main track switches;
- Restoring main track switches to their normal position;
- Securing (locking) main track switches;
- Correspondence of switch targets to switch position;
- Clearing limits of main track authority;
- Job briefings; and
- Switch Position Awareness Form (SPAF).

After receiving initial instruction, all employees must receive periodic instruction, in accordance with 49 CFR 217.11. Railroads shall maintain records of both initial and periodic instruction available for inspection and copying by representatives of the FRA during normal business hours. These records shall be maintained for a period of at least two years following the end of the calendar year during which the instruction was conducted.

(2) Hand-Operated Main Track Switches

Employees operating hand-operated main track switches in non-signaled territory shall be qualified on the railroad's operating rules relating to their operation. No employee is permitted to operate or verify the position of a hand-operated main track switch in non-signaled territory unless that person is qualified on the railroad's operating rules relating to their operation.

Employees operating hand-operated main track switches in non-signaled territory are individually responsible for the proper operation of these switches, including restoration to their normal position after use. Employees operating hand-operated main track switches in non-signaled territory must visually ensure that:

- Hand-operated main track switches are properly lined for the intended route; and
- The switch points fit properly and the switch target, if so equipped, corresponds with the switch's position.

The normal position of a main track switch shall be designated by the railroad and the switch must be lined and locked in that position when not in use, except when the switch is left in the charge of a crewmember of another train or the train dispatcher directs otherwise. When switches are not being operated, they must be locked, hooked or latched if so equipped.

Before releasing the limits of a main track authority, the employee releasing the limits must report to the train dispatcher that all hand-operated main track switches operated have been restored to their normal position, unless the train dispatcher directs otherwise. The train dispatcher must confirm the switch positions with the employee releasing the limits before clearing the limits of the authority. Additionally, in the case of a train, the train dispatcher must confirm that both the conductor and engineer have initialed the SPAF as required.

(3) Switch Position Awareness Form (SPAF)

Employees operating hand-operated main track switches in non-signaled territory shall complete a SPAF. Employees are individually responsible for the proper completion of these forms. The form must contain:

- Train symbol, job number or other unique identifier;
- Date;
- Subdivision;
- Employee's name; in the case of a train, both the Engineer's and Conductor's names;
- Name and location of each main track switch operated by any employee;
- Time switch was initially reversed;
- Time switch was finally returned to the normal position;
- Initials of the employee handling the switch;
- Engineer's initials for each entry; and
- Conductor's signature when the form is completed.

Entries made with respect to a specific hand-operated main track switch in non-signaled territory must be recorded as soon as practicable after the

switch is reversed, and as soon as practicable after the switch is returned to its normal position before leaving the location. All information required on the SPAF must be entered before an employee reports clear of the limits of the main track authority. SPAFs shall be retained for a period of five days and made available to representatives of the FRA for inspection and copying.

(4) Job Briefings

Job briefings shall be conducted by employees in connection with the operation of hand-operated main track switches in non-signaled territory:

- Before work is begun;
- Each time a work plan is changed; and
- At completion of the work.

(5) Radio Communication

In the case of a train, each time a crewmember operates, i.e., changes the position of, a hand-operated main track switch in non-signaled territory, the crewmember shall communicate with the engineer by radio while physically at the switch location, stating the switch name and location, and the position of the switch (normal/reverse). Before movement may occur, the engineer must acknowledge that information by radio.

If radios become inoperable, all crewmembers must conduct a job briefing regarding the use of hand-operated main track switches in non-signaled territory before use, noting the inoperable radio on the SPAF.

(6) Operational Tests and Inspections

The railroad's program of operational tests and inspections under 49 CFR part 217 shall be revised as necessary to include the requirements of this EO, and shall specifically provide for a minimum number of such tests per year.

(7) Distribution of Emergency Order

A copy of this EO shall be provided to all employees affected by this EO. A written receipt or acknowledgment must be retained permanently for each affected employee.

Relief: Petitions for special approval to take actions not in accordance with this EO may be submitted to the Associate Administrator for Safety, who shall be authorized to dispose of those requests without the necessity of amending this EO. In reviewing any petition for special review, the Associate Administrator for Safety shall only grant petitions in which a petitioner has clearly articulated an alternative action that will provide, in the Associate Administrator for Safety's judgment, at least an equivalent level of safety as this EO provides. A copy of this petition should be submitted to the Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room Pl-401, 400 Seventh St., SW., Washington, DC 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its Web site at *http://dms.dot.gov*.

FRA recognizes that certain railroad operating rules or equipment used by some railroads already provide a level of safety equivalent to this EO. If all of a railroad's hand-operated main track switches in non-signaled territory are covered by one or more of the protective measures identified below, a railroad need not apply for relief from this EO as relief shall be deemed automatically granted. Relief from this EO is automatically granted when:

- Operating rules require trains to approach all facing point hand-operated switches in non-signaled territory prepared to stop;
- Hand-operated main track switches in non-signaled territory (unless out of service) are protected by distant switch indicators; or
- Hand-operated main track switches in non-signaled territory are protected by switch point indicators, e.g., BNSF's automatic switches and CSX's self restoring switches, unless these switches are operated by hand.

Penalties: Any violation of this EO shall subject the person committing the violation to a civil penalty of up to $27,000. 49 U.S.C. 21301, 28 U.S.C. 2461, and *see* 69 FR 30591 (May 28, 2004). ''Person'' is defined by statute to include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. 1 U.S.C. 1. FRA may, through the Attorney General, also seek injunctive relief to enforce this EO. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons: Upon issuance of this EO, railroads shall immediately initiate steps to implement this EO. Railroads shall complete implementation no later than November 22, 2005. Notice of this EO will be provided by publishing it in the **Federal Register**.

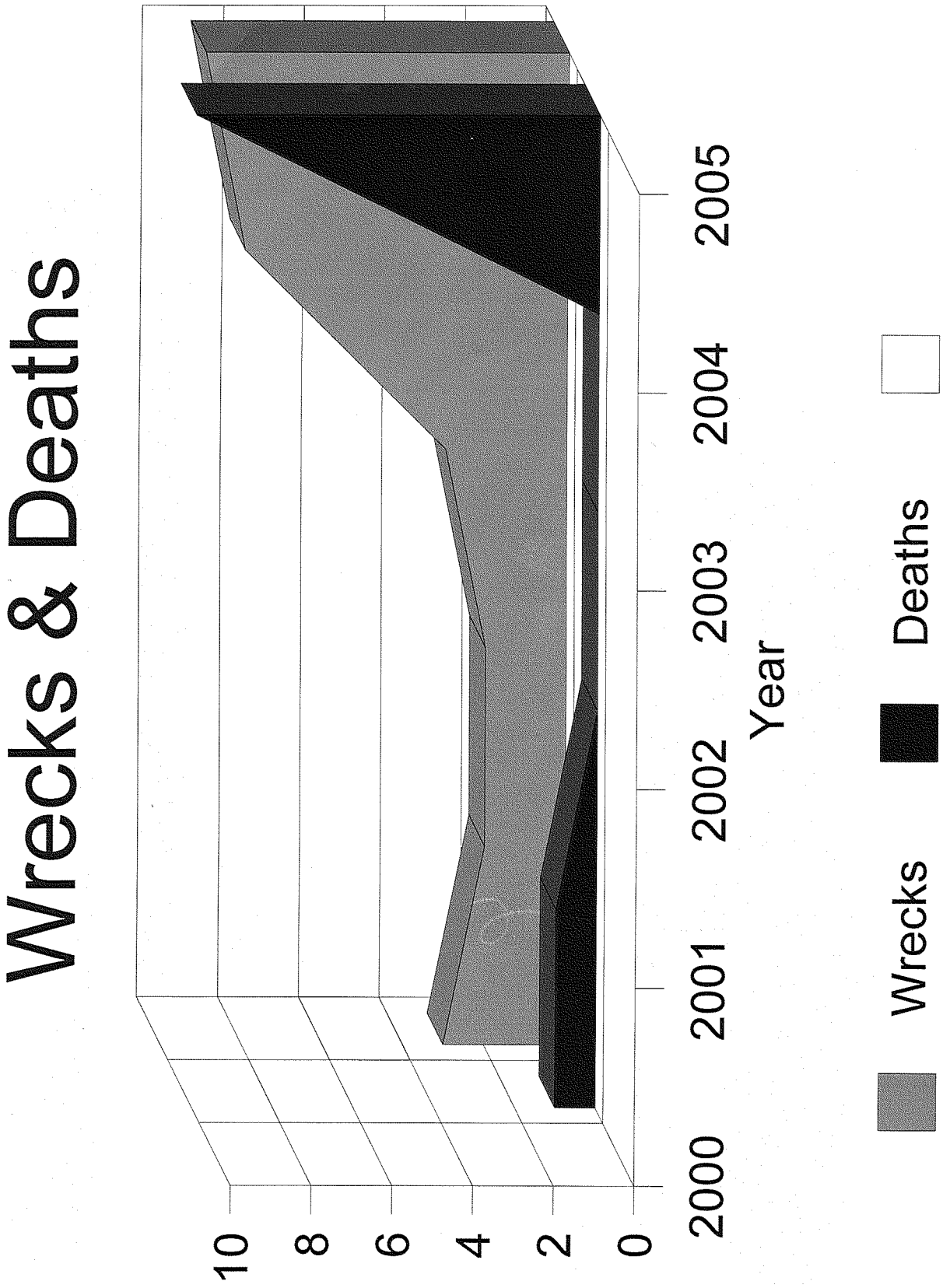
Review: Opportunity for review of this EO will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on October 19, 2005.

Joseph H. Boardman,

Administrator.

BILLING CODE 4910–06–P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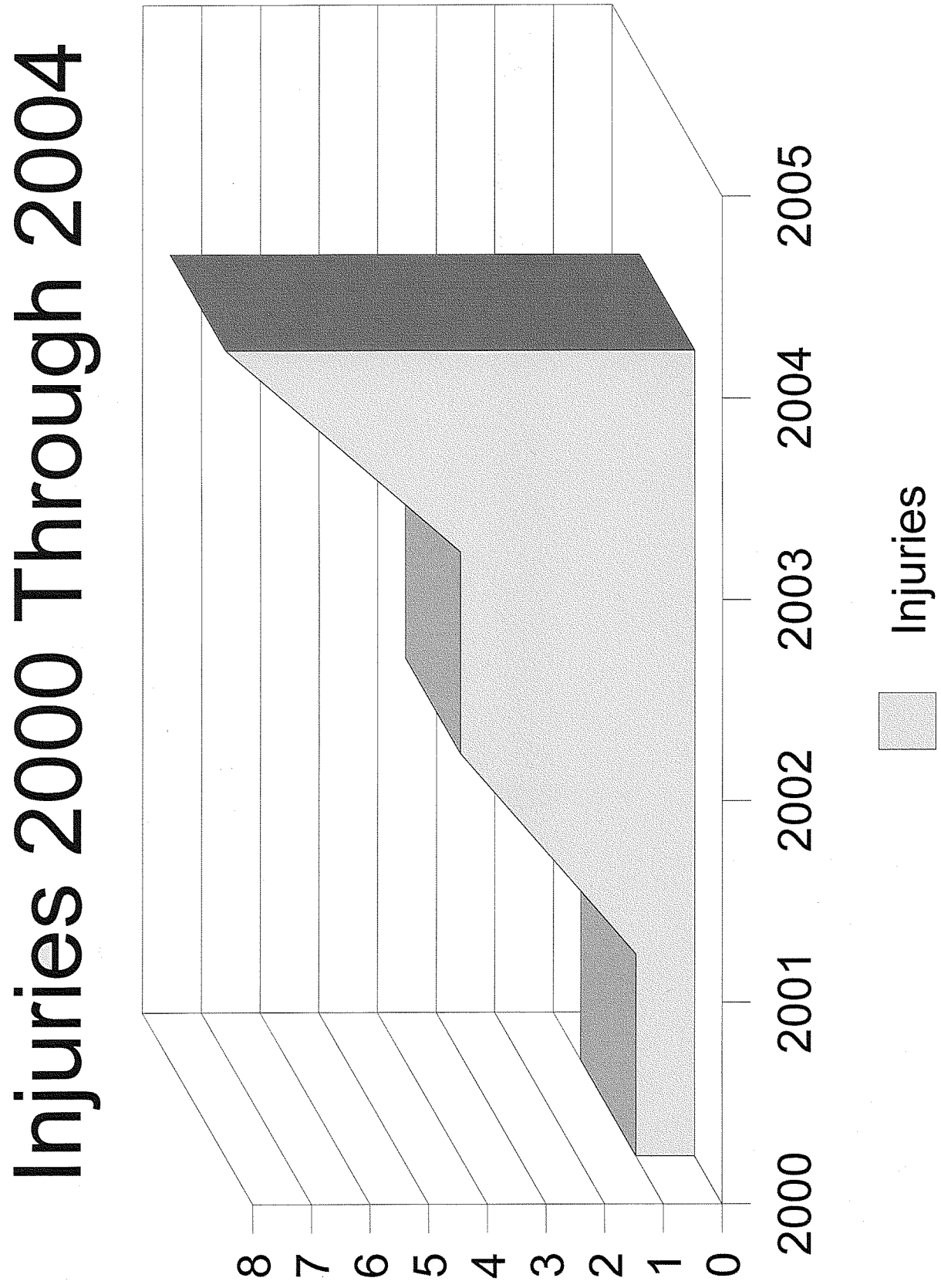
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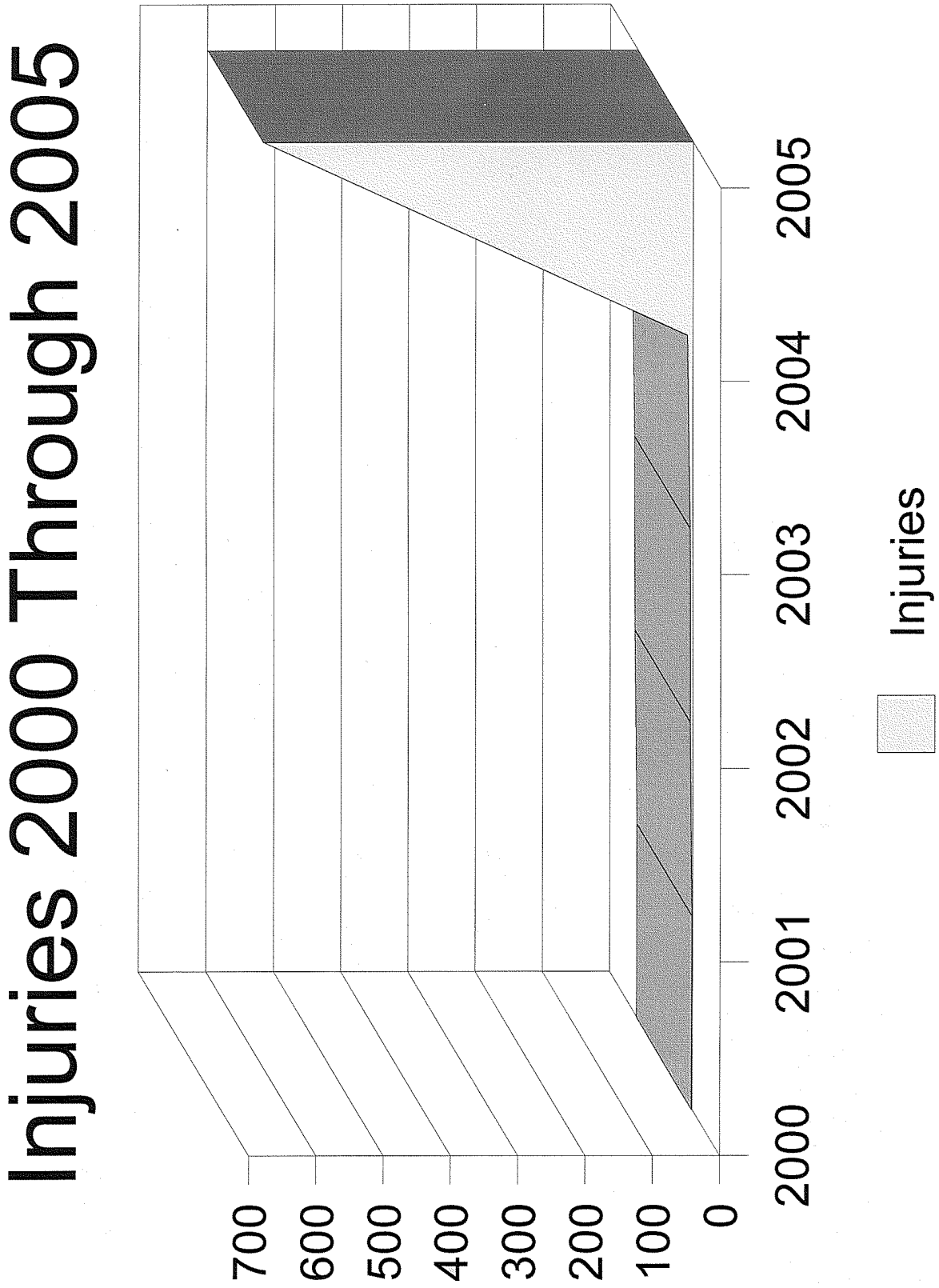
Injuries


Injuries 2000 Through 2005
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Injuries

[FR Doc. 05–21253 Filed 10–21–05; 8:45 am]
BILLING CODE 4910–06–C

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0601)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of an existing PHMSA information collection. In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) described below has been forwarded to OMB for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. PHMSA published a **Federal Register** Notice soliciting comments on the following information collection and received none. The purpose of this notice is to allow the public an additional 30 days from the date of this notice to submit comments.

DATES: Comments must be submitted on or before November 23, 2005.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

FOR FURTHER INFORMATION CONTACT: William Fuentevilla, (202) 366–6199, by e-mail at *William.Fuentevilla@dot.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques of other forms of information technology. PHMSA published a **Federal Register** Notice with a 60-day comment period for this ICR on August 11, 2005 (70 FR 46915).

Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their useful life. This trend is expected to continue. In 1992, Congress responded to this issue by amending the Pipeline Safety Act (49 U.S.C. 60108(c)(6)(B)). The Act directs the Secretary of Transportation to require operators of an offshore pipeline facility, or a pipeline crossing navigable waters, to report the abandonment to the Secretary of Transportation in a way that specifies whether the facility has been abandoned properly according to applicable Federal and State requirements. PHMSA's regulations for abandonment reporting can be found at 49 CFR 192.727 and 195.402.

This information collection supports the DOT strategic goal of safety by reducing the number of fatalities, injuries, and amount of property damage.

As used in this notice, ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Pipeline Safety Reports of Abandoned Underwater Pipelines

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents per Year: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Issued in Washington, DC, on October 18, 2005.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. 05–21140 Filed 10–21–05; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0600)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of an existing PHMSA information collection. In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) described below has been forwarded to OMB for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. PHMSA published a **Federal Register** Notice soliciting comments on the following collection of information and received none. The purpose of this notice is to allow the public an additional 30 days from the date of this notice to submit comments.

DATES: Comments must be submitted on or before November 23, 2005.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

FOR FURTHER INFORMATION CONTACT: William Fuentevilla, (202) 366–6199, by e-mail at *William.Fuentevilla@dot.gov*.

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques of other forms of information technology. PHMSA published a **Federal Register** Notice with a 60-day comment period for this ICR on August 11, 2005 (70 FR 46914).

Congress expressed concern with unskilled pipeline personnel in the Pipeline Safety and Reauthorization Act of 1988 (Pub. L. 100–561). This Act authorized the Secretary of Transportation to require all individuals responsible for the operation and maintenance of pipeline facilities to be properly qualified to safely perform their tasks. The operator qualification requirements are described in the pipeline safety regulations at 49 CFR part 192, subpart N and 49 CFR part 195, subpart G.

This information collection supports the DOT strategic goal of safety by reducing the number of fatalities, injuries, and amount of property damage.

As used in this notice, ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Operator Qualification of Pipeline Personnel.

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 22,300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 466,667 hours.

Issued in Washington, DC, on October 18, 2005.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. 05–21141 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Electronic License Application Form

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Electronic License Application Form TD–F 90–22.54.

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to ''Paperwork Reduction Act'' care of the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: OFAC Application for the Release of Blocked Funds.

Agency Form Number: TD–F 90–22.54.

OMB Number: 1505–0170.

Abstract: Transactions prohibited pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1–44, the International Emergency Economic Powers Act, 50 U.S.C. 1701, and similar authorities may be authorized by means of specific licenses issued by the Office of Foreign Assets Control (''OFAC''). Such licenses are issued in response to applications submitted by persons or institutions whose property has been blocked or who wish to engage in transactions that would otherwise be prohibited. Form TD–F 90–22.54, which provides a standardized method for all applicants seeking the unblocking of funds transfers, is available in electronic format on OFAC's website. Use of the form greatly facilitates and speeds these applicants' submissions and OFAC's processing of such applications while simultaneously obviating the need for applicants to write lengthy letters to OFAC, thus reducing the overall burden of the application process. Since February 2000, use of the form to apply for the unblocking of funds transfers has been mandatory pursuant to a revision in OFAC's regulations at 31 CFR 501.801. See 65 FR 10708, February 29, 2000.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals/ businesses and other for-profit institutions/banking institutions.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 2005.

Barbara C. Hammerle,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 05–21198 Filed 10–21–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–102–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–102–86 (TD 8316), Cooperative Housing Corporations (§ 1.216–1(d)(2)).

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet (*RJoseph.Durbala@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Cooperative Housing Corporations.

OMB Number: 1545–1041.

Regulation Project Number: PS–102–86 Final.

Abstract: Section 1.216–1(d)(2) of this regulation allows cooperative housing corporations to make an election whereby the amounts of mortgage interest and/or real estate taxes allocated to tenant-stockholders of the corporation will be based on a reasonable estimate of the actual costs attributable to each tenant-stockholders based on the number of shares held in the corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5844 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–54–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–54–89 (TD 8444). Applicable Conventions Under the Accelerated Cost Recovery System (§ 1.168(d)–1(b)(7)).

DATES: Written comments should be received on or before December 23, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

OMB Number: 1545–1146.

Regulation Project Number: PS–54–89 Final.

Abstract: The regulations describe the time and manner of making the notation required to be made on Form 4562, under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with section 168 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 6 min.

Estimated Total Annual Burden Hours: 70 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5845 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–248770–96 (Final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–248770–96 (TD 8725). Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (301.7430–2(c)).

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

OMB Number: 1545–1356.

Regulation Project Number: REG–248770–96.

Abstract: Under Internal Revenue Code section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding that relates to the determination, collection, or refund of any tax, interest, or penalty. Section 301.7430–2(c) of the regulation provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written request in accordance with the requirements of the regulation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations, not-for-profit institutions, farms, and the Federal government.

Estimated Number of Respondents: 38.

Estimated Time Per Respondent: 2 hours, 16 minutes.

Estimated Total Annual Burden Hours: 86.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5846 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13614

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13614, Interview and Intake Sheet.

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interview and Intake Sheet.

OMB Number: 1545–1964.

Form Number: Form 13614.

Abstract: The SPEC function developed the Form 13614 that contains a standardized list of required intake questions to guide volunteers in asking taxpayers basic questions about themselves. The intake sheet is an effective tool ensuring that critical taxpayer information is obtained and applied during the interview process.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, and not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 1,056,049.

Estimated Time Per Respondent: 12 min.

Estimated Total Annual Burden Hours: 211,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5847 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form A, Qualifications & Availability Form.

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualifications & Availability.

OMB Number: 1545–1681.

Form Number: Form A.

Abstract: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Responses: 90,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 45,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5848 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–27–89; FI–61–91]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulations, FI–27–89 (TD 8366), Real Estate Mortgage Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91 (TD 8431), Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (§§ 1.67–3, 1.860D–4, 1.860F–4, 1.6049–4 and 1.6049–7).

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through

the Internet, at (*Allan.M.Hopkins@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: FI–27–89, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

OMB Number: 1545–1018.

Regulation Project Number: FI–27–89 and FI–61–91.

Abstract: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 655.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 978.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5849 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–165–84]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, FI–165–84, Below-Market Loans (§§ 1.7872–11(g)(l) and 1.7872–11(g)(3)).

DATES: Written comments should be received on or before December 23, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at the Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Below-Market Loans.

OMB Number: 1545–0913.

Regulation Project Number: FI–165–84 (Notice of Proposed Rulemaking).

Abstract: Internal Revenue Code section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have imputed income or claim imputed deductions under Code section 7872.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,631,202.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 481,722.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5850 Filed 10–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Disruption of Mail Service

October 18, 2005.

AGENCY: Department of Veterans Affairs.

ACTION: Notice of exception to date of receipt.

SUMMARY: On August 29, 2005, Hurricane Katrina came through the

states of Louisiana, Mississippi, and Alabama. As a result, operations at the Department of Veterans Affairs (VA) Regional Offices in New Orleans, Louisiana, and Jackson, Mississippi, were interrupted. Additionally, postal services in the affected regions have been interrupted. As a result of the interruptions, correspondence containing claims, information, or evidence sent to the affected VA Regional Offices is likely to be interrupted. VA wishes to protect the claimants who send correspondence to the Veterans Benefits Administration (VBA) through the normal channels of communication from being deprived of benefits solely because those channels of communication have been disrupted due to events outside of the claimants' control. Therefore, VA is instituting procedures to consider alternative dates as the date of receipt of correspondence.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Compensation and Pension Service, Policy and Regulations Staff (211D), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: A VA regulation allows the Under Secretary for Benefits to establish exceptions to VA's rule about date of receipt of claims, information, or evidence. Ordinarily, ''date of receipt,'' means the date on which a claim, information, or evidence was received in a VA office. The regulation states that exceptions may be established when a natural or man-made interference with the normal channels through which VA ordinarily receives correspondence has resulted in one or more VA Regional Offices experiencing extended delays in receipt of claims, information, or evidence to an extent that, if not addressed, would adversely affect such claimants through no fault of their own. The full regulation can be found at 38 CFR 3.1(r).

On August 29, 2005, Hurricane Katrina came through the states of Louisiana, Mississippi, and Alabama. As a result, operations at VA's Regional Offices in New Orleans, Louisiana, and Jackson, Mississippi, were interrupted. Additionally, postal services in the affected regions, including parts of Alabama, have been interrupted.

As a result of the interruptions, correspondence containing claims, information, or evidence sent to the affected VA Regional Offices has been significantly interrupted. Because the New Orleans Regional Office was closed, VA established that mail addressed there would be forwarded by the U.S. Postal Service to the Muskogee Regional Office in Oklahoma. In addition, claimants and beneficiaries in Louisiana have been instructed to send their correspondence to the Muskogee Regional Office.

VA wishes to prevent claimants and beneficiaries who send correspondence to VA from being deprived of benefits because the mail service has been disrupted due to events outside of their control. We have therefore established the following exceptions to the standard rule on date of receipt.

Exceptions to Date of Receipt for Louisiana, Mississippi, and Alabama

The Department of Veterans Affairs (VA) hereby gives notice that for purposes of determining the date of entitlement, any correspondence received by the New Orleans Regional Office (or by the Muskogee Regional Office from Louisiana), the Jackson Regional Office, or the Montgomery Regional Office, which contains claims, information, or evidence will be considered received on the date the claimant or beneficiary (or representative) signed the correspondence. If there is no dated signature on the correspondence, then the correspondence will be considered received on the date it was postmarked.

This exception is effective for correspondence received by the New Orleans Regional Office (or by the Muskogee Regional Office from Louisiana) from August 29, 2005 through October 27, 2005.

This exception is effective for correspondence received by the Jackson Regional Office or the Montgomery Regional Office from August 29, 2005 through September 27, 2005.

Approved: October 17, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E5–5851 Filed 10–21–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice updates the VA Performance Review Board of the Department of Veterans Affairs that was published in the **Federal Register** on October 7, 2005 (70 FR 58793)).

EFFECTIVE DATE: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Charlotte Moment, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8165.

VA Performance Review Board (PRB)

R. Allen Pittman, Assistant Secretary for Human Resources and Administration (Chairperson).
Claude M. Kicklighter, Chief of Staff.
Thomas G. Bowman, Deputy Chief of Staff (Alternate).
Sharon K. Barnes, Executive Secretary.
Edward F. Meagher, Deputy Assistant Secretary for Information Technology Management.
Ronald R. Aument, Deputy Under Secretary for Benefits, Veterans Benefits Administration.
Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate).
Michael J. Kussman, M.D., Deputy Under Secretary for Health, Veterans Health Administration.
Dennis M. Lewis, Acting Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration (Alternate).
John H. Thompson, Deputy General Counsel.
Rita Reed, Deputy Assistant Secretary for Budget.
Jon A. Wooditch, Deputy Inspector General.
Richard Wannemacher, Jr., Acting Under Secretary, National Cemetery Administration.

Veterans Benefits Administration PRB

Ronald R. Aument, Deputy Under Secretary for Benefits, (Chairperson).
Geraldine V. Breakfield, Associate Deputy Under Secretary for Management.
Jack F. McCoy, Associate Deputy Under Secretary for Policy & Program Management.
Michael Walcoff, Associate Deputy Under Secretary for Field Operations.
James Bohmbach, Chief Financial Officer.
Diana M. Rubens, Director, Western Area Office.
Thomas Bowman, Deputy Chief of Staff, Office of the Secretary.

Veterans Health Administration PRB

Michael J. Kussman, MD, Chair, Deputy Under Secretary for Health.
Dennis M. Lewis, Vice-Chair, Acting Deputy Under Secretary for Health for Operations and Management.

Linda W. Belton, Network Director, VISN 11.
Everett A. Chasen, Chief Communications Officer.
Jeanette A. Chirico-Post, MD, Network Director, VISN 1.
William F. Feeley, Network Director, VISN 2.
Barbara B. Fleming, MD, PhD, Chief Quality and Performance Officer.
Arthur S. Hamerschlag, VHA Chief of Staff.
Robert M. Kolodner, MD, Associate Chief Information Officer.
Robert E. Lynch, MD, Network Director, VISN 16.
Jimmy A. Norris, Chief Financial Officer.
Robert A. Petzel, MD, Network Director, VISN 23.
Catherine J. Rick, RN, MSN, Chief Nursing Officer.
Patricia Vandenberg, Assistant Deputy Under Secretary for Health for Policy and Planning.
Linda F. Watson, Network Director, VISN 7.
Nevin M. Weaver, Director, Management Support Office (Ex Officio).
Robert L. Wiebe, MD, Network Director, VISN 21.
Mark E. Shelhorse, Acting Chief Consultant, Mental Health Strategic Health Care Group.
Dennis Duffy, Acting Assistant Secretary for Policy, Planning, and Preparedness.

Office of Inspector General PRB

Stephen J. Cossu, Assistant Inspector General for Investigations, Department of Labor.
Michael P. Stephens, Deputy Inspector General, Department of Housing and Urban Development, Office of Inspector General.
R. Joe Haban, Assistant Inspector General for Investigations, Department of Health and Human Services, Office of Inspector General.

Dated: October 18, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. 05–21119 Filed 10–21–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
October 24, 2005

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Meetings; Science Advisory Board; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meetings: Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Open Meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, November 8, 2005, from 8:30 a.m. to 12:45 p.m. and Wednesday, November 9, 2005, from 9 a.m. to 4 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Beacon Hotel, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Status: The meeting will be open to public participation with a 30-minute public comment period on November 8 from 12:15 p.m. to 12:45 p.m. (check Web site to confirm this time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by November 1, 2005 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after November 1 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) Discussion and approval of the Report of the ''Evaluation of NOAA's Response to the Research Review Report''; (2) Approval of NOAA Cooperative Institute (CI) Reviews (the CI for Climate and Ocean Research and the CI for Limnology and Ecosystems Research); (3) Briefings on NOAA's role related to Hurricanes Katrina and Rita; (4) Updates from the Reviews of NOAA Ecosystem Science and Research and of NOAA Physical and Social Sciences; (5) Briefing on the reauthorization of the Magnuson Stevens Fishery Conservation and Management Act—Update on provisions in the Administration's proposed bill regarding science and data collection; and (6) Report on the Review of the National Sea Grant College Extension Program and a Call for Greater National Commitment to Engagement.

FOR FURTHER INFORMATION CONTACT: Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: Michael.Uhart@noaa.gov); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: October 18, 2005.

Mark Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Atmospheric Administration.

[FR Doc. 05–21213 Filed 10–21–05; 8:45 am]

BILLING CODE 3510–KD–P

Federal Register

Monday,
October 24, 2005

Part III

Department of Commerce

Availability of Grants Funds for Fiscal Year 2006; Reopening of Application Deadline; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.030602141–5265–28]

Availability of Grants Funds for Fiscal Year 2006; Reopening of Application Deadline

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA publishes this notice to reopen the solicitation period on the ''NOAA Office of Ocean Exploration Announcement of Opportunity, FY 2006,'' which was originally announced in the **Federal Register** on June 30, 2005. This notice applies to only those applicants who have already submitted preproposals. The solicitation period is being extended from October 3, 2005 to October 28, 2005 to provide preproposal applicants more time to submit proposals.

DATES: Applications must be received no later than 5 p.m. e.s.t. on October 28, 2005.

ADDRESSES: Applications should be submitted electronically to *http://www.grants.gov/* and to the Office's Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov*. Electronic submission is strongly encouraged. Applicants without Internet access may send applications to Proposal Manager, NOAA Office of Ocean Exploration, 1315 East-West Highway, SSMC3, 10th Floor, Silver Spring, Maryland 20910; these applications must be received by the Office of Ocean Exploration no later than 5 p.m. e.s.t. on October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Nicolas Alvarado by telephone at 301–713–9444, ext. 130 or by e-mail at *nicolas.alvarado@noaa.gov* or Jeremy Potter by telephone at 301–713–9444, ext.136 or by e-mail at *jeremy.potter@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to reopen the solicitation period on the following initiative originally announced in the **Federal Register** on June 30, 2005 (70 FR 37766). NOAA reopens the solicitation period for the *NOAA Office of Ocean Exploration Announcement of Opportunity, FY 2006* from October 3, 2005 to October 28, 2005 to provide those applicants who have already submitted preproposals more time to submit their final proposals. This reopening does not alter the intent of the Office of Ocean Exploration's letters of encouragement and discouragement previously sent to preproposal applicants. Final proposals that were received between October 3 and October 28, 2005 will be considered timely and be given full consideration. All other requirements for this solicitation remain the same.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177B66178, for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/, including our NOAA Administrative Order 216–6 for NEPA, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public

property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 18, 2005.

Mark Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–21214 Filed 10–21–05; 8:45 am]

BILLING CODE 3510–KD–P

Federal Register

Monday,
October 24, 2005

Part IV

Environmental Protection Agency

Fifty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0039; FRL–7739–9]

Fifty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 56th ITC Report to the Administrator of EPA on September 15, 2005. In the 56th ITC Report, which is included with this notice, the ITC is revising the TSCA section 4(e) *Priority Testing List* by adding 5 High Production Volume (HPV) orphan chemicals and 2 tungsten compounds and removing 28 HPV orphan chemicals, 3 pyridinamine compounds, 6 indium compounds, and 6 vanadium compounds. The ITC is requesting that EPA add the 5 HPV orphan chemicals and 2 tungsten compounds to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule and the 5 HPV orphan chemicals to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule. To facilitate the efforts of EPA, other Federal and State agencies, interested stakeholders, and members of the public in obtaining basic health effects and environmental data on HPV chemicals, the ITC conducted a December 2004 Data-Availability Study of 235 substances that were HPV chemicals in the 1998 and 2002 Inventory Update Rules (IURs), but not in the 1990 or 1994 IURs. The study is discussed and the list of 235 substances is appended to this 56th ITC Report.

DATES: Comments must be received on or before November 23, 2005.

ADDRESSES: Comments, identified by docket identification (ID) number OPPT–2005–0039, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2005–0039. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.You may also access additional information about the ITC at *http://www.epa.gov/opptintr/itc* or through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at *http://www.epa.gov/opptsfrs/home/opptsim.htm/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the

photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0039. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0039. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0039. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the 56th ITC Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this notice.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: October 14, 2005.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

Fifty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

Table of Contents

SUMMARY

The ITC is revising the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List* by adding 5 High Production Volume (HPV) orphan chemicals and 2 tungsten compounds and removing 28 HPV orphan chemicals, 3 pyridinamine compounds, 6 indium compounds, and 6 vanadium compounds. The ITC is requesting that EPA add the 5 HPV orphan chemicals and 2 tungsten compounds to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule and the 5 HPV orphan chemicals to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule. To facilitate the efforts of EPA, other Federal and State agencies, interested stakeholders and members of the public in obtaining basic health effects and environmental data on HPV chemicals, the ITC conducted a December 2004 data-availability study of 235 substances that were HPV chemicals in the 1998 and 2002 Inventory Update Rules (IURs), but not in the 1990 or 1994 IURs. The study is discussed and the list of 235 substances is appended to this 56th ITC Report.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this section.

TABLE 1.—TSCA SECTION 4(E) PRIORITY TESTING LIST (AUGUST 2005)

ITC report	Date	Chemical name/group	Action
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	4-tert-Butylphenol and Branched nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
47	November 2000	3 Indium compounds	Recommended
51	November 2002	12 Vanadium compounds	Recommended
53	November 2003	20 Tungsten compounds	Recommended
55	December 2004	246 HPV orphan chemicals	Recommended
56	August 2005	5 HPV orphan chemicals 2 Tungsten compounds	Recommended

I. Background

The ITC was established by section 4(e) of TSCA ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC's web site (*http://www.epa.gov/opptintr/itc*) within a few days of submission to the Administrator and from the EPA's web site (*http://www.epa.gov/fedrgstr*) after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) may add the chemicals from the revised *Priority Testing List* to the TSCA section 8(a) PAIR or TSCA section 8(d) HaSDR rules. The PAIR rule requires manufacturers (including importers) of

chemicals added to the *Priority Testing List* to submit production and exposure reports (*http://www.epa.gov/opptintr/chemtest/pairform.pdf*). The HaSDR rule requires manufacturers (including importers) of chemicals added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (Ref. 1). All submissions to both rules must be received by the EPA within 90 days of the reporting rules' *Federal Register* publication date, i.e., 60 days from the reporting rules' effective date, because 30 days are allowed for public comment.

B. ITC's Use of TSCA Section 8 and Other Information

The ITC's use of TSCA section 8 and other information is described in the 52nd ITC Report (*http://www.epa.gov/opptintr/itc/rptmain.htm*).

C. Previous Requests to Add Chemicals to the TSCA Section 8(a) PAIR and Section 8(d) HaSDR Rules

In its December 8, 2004, 55th ITC Report to the EPA Administrator, the ITC added 276 HPV Challenge Program Orphan chemicals to the *Priority Testing List*, and requested that EPA add them to TSCA section 8(a) PAIR and 8(d) HaSDR rules. HPV Challenge Program chemicals are those with U.S. annual production or importation volumes of 1 million pounds or more reported to EPA in the 1990 IUR (*http://www.epa.gov/opptintr/chemrtk/hpv_1990.htm*) supplemented with additional HPV chemicals from the 1994 IUR (*http://www.epa.gov/opptintr/chemrtk/hpv_1994.htm*). HPV orphan chemicals are those for which companies have not made commitments under the EPA's HPV Challenge Program to prepare Robust Summaries, sponsor testing, etc.

On February 11, 2005, the 55th ITC Report was published in the **Federal Register** and included 270 HPV orphan chemicals (Ref 2). The smaller number of HPV orphan chemicals (270) in the **Federal Register** version of the 55th ITC Report was attributed to new commitments for 6 HPV orphan chemicals made by companies under the HPV Challenge Program.

As noted in section IV.B.1., commitments for 2 of the 6 HPV orphan chemicals, ethanol, 2-methoxy- (Chemical Abstracts Service Registry Number (CAS No.) 109–86–4) and tetradecane (CAS No. 629–59–4) were transferred to the International Council of Chemical Association (ICCA) HPV Initiative. As a result, these 2 HPV orphan chemicals will not be added to TSCA section 8(a) PAIR and 8(d) HaSDR rules and are not included in Appendix A.

However, 4 of the 6 HPV orphan chemicals that were not included in the February 11, 2005 **Federal Register** notice are being retained on the December 8, 2004 *Priority Testing List* and added back to the February 11, 2005 *Priority Testing List* because these new commitments were received by EPA after December 8, 2004 (Table 2 of this section).

TABLE 2.—HPV ORPHAN CHEMICALS BEING RETAINED ON THE DECEMBER 8, 2004 PRIORITY TESTING LIST AND ADDED BACK TO THE FEBRUARY 11, 2005 PRIORITY TESTING LIST

CAS No.	HPV orphan chemical
78–42–2	Phosphoric acid, tris(2-ethylhexyl) ester
12645–31–7	Phosphoric acid, 2-ethylhexyl ester
68511–40–0	1-Propanamine, 3-(tridecyloxy)-, branched
68553–14–0	Hydrocarbons, C8–11

In addition, there are 4 HPV orphan chemicals that are being retained on the December 8, 2004 and February 11, 2005 *Priority Testing List* because these new commitments were also received by EPA after December 8, 2004 (Table 3 of this section).

TABLE 3.—HPV ORPHAN CHEMICALS BEING RETAINED ON THE DECEMBER 8, 2004 AND FEBRUARY 11, 2005 PRIORITY TESTING LIST

CAS No.	HPV orphan chemical
140–08–9	Ethanol, 2-chloro-, phosphite (3:1)
25586–42–9	Phosphorous acid, tris(methylphenyl) ester
68953–70–8	Oxirane, reaction products with ammonia, distn. residues
70024–67–8	Benzenesulfonic acid, C1–24-alkyl derives.

The commitments for the 8 HPV orphan chemicals in Tables 2 and 3 of this section are being treated as new commitments in accordance with EPA's Policy Regarding Acceptance of New Commitments to Sponsor Chemicals under the HPV Challenge Program. The June 27, 2005 policy is described in *http://www.epa.gov/chemrtk/hpvpolcy.htm* and outlines a process by which EPA continues to encourage commitments from U.S. manufacturers and importers of HPV chemicals and defines specific timelines for submitting test plans and robust summaries.

At this time, the 8 HPV orphan chemicals in Tables 2 and 3 of this section will not be added to TSCA section 8(a) PAIR and 8(d) HaSDR rules and are not included in Appendix A. However, maintaining these 8 HPV orphan chemicals on the *Priority Testing List* will ensure that recourse to future TSCA 8(a) and 8(d) rules can address those chemicals for which commitments are not met according to the June 27, 2005 policy.

D. New Requests to Add Chemicals to the TSCA Section 8(a) PAIR and Section 8(d) HaSDR Rules

In this report, the ITC is requesting that EPA add the 5 HPV orphan chemicals discussed in section IV.A.1. to the TSCA section 8(a) PAIR and section 8(d) HaSDR rules. The ITC requests that tungsten oxides, $W_{10}O_{29}$ (CAS No. 12037–58–0) and $W_{18}O_{49}$ (CAS No. 12037–57–9), be added to a different TSCA section 8(a) PAIR rule than the HPV orphan chemicals.

III. ITC's Activities During this Reporting Period (December 2004 to August 2005)

A. Status of HPV Challenge Program Orphan Chemicals

During this reporting period, the ITC Director met with EPA to discuss the EPA Policy Regarding Acceptance of New Commitments to Sponsor Chemicals under the HPV Challenge Program (*http://www.epa.gov/chemrtk/hpvpolcy.htm*). Under this Policy, EPA will accept new commitments for the 243 HPV orphan chemicals listed in Appendix A. Appendix A includes the 5 HPV orphan chemicals discussed in section IV.A.1., but not the 2 HPV orphan chemicals transferred to the ICCA HPV Initiative, the 8 HPV orphan chemicals in Tables 2 and 3, and the 28 HPV orphan chemicals discussed in section IV.B.1. EPA will accept new commitments from the date the ITC submitted its 55th ITC Report to the EPA Administrator (i.e., December 8, 2004) until 14 days following publication of the TSCA section 8(a) PAIR and 8(d) HaSDR rules for the 243 HPV orphan chemicals listed in Appendix A. HPV orphan chemicals for which new commitments are accepted based on EPA's policy will either not be included in or will be removed from the 8(a) PAIR and 8(d) HaSDR rules prior to their effective dates.

In contrast to Appendix A, the *Priority Testing List* from the 55th ITC

Report includes the 8 HPV orphan chemicals in Tables 2 and 3, but not the 2 HPV orphan chemicals transferred to the ICCA HPV Initiative and the 28 HPV orphan chemicals discussed in section IV.B.1. for a total of 246 HPV orphan chemicals. With the addition of the 5 HPV orphan chemicals discussed in section IV.A.1., there are a total of 251 HPV orphan chemicals on the *Priority Testing List*.

B. Data-Availability Study for HPV Chemicals in the 1998 and 2002 IURs, But Not in the 1990 or 1994 IURs

To facilitate the efforts of EPA, other Federal and State agencies, interested stakeholders and members of the public in obtaining basic health effects and environmental data on HPV chemicals, the ITC conducted a data-availability study in December 2004. The study focused on 235 substances that were HPV chemicals in the 1998 and 2002 IURs, but not in the 1990 or 1994 IURs. The HPV status of these chemicals was confirmed on May 25, 2005. Since the ITC conducted its study, the American Chemistry Council (ACC), Soap and Detergent Association (SDA) and Synthetic Organic Chemical Manufacturers Association (SOCMA) announced its Extended HPV (EHPV) Program on March 15, 2005. The goal of the EHPV Program is to collect and publish health and environmental information on approximately 500 chemicals that did not qualify as HPV chemicals under the EPA's original HPV Challenge program but have since reached the 1 million pound per year threshold according to the 2002 IUR.

The ITC is making the results of the study available in this 56th ITC Report to provide the ACC, SDA, SOCMA, and others involved in the industry-led EHPV Program with information that will assist these organizations in determining if there are existing unpublished studies that can provide the basic health and environmental effects data on these HPV chemicals.To complement the data-availability study of 235 HPV chemicals included in both the 1998 and 2002 IURs, the ITC conducted a data-availability study in August 2005 of about 284 additional chemicals that were HPV chemicals only in the 2002 IUR but not in the 1990, 1994 or 1998 IURs. None of these 284 chemicals were included in the data-availability study of 235 HPV chemicals in the 1998 and 2002 IURs. The ITC will make the results of this study public in its 57th ITC Report to the EPA Administrator. In addition, the ITC has initiated data-availability studies on categories of non-HPV chemicals and will make the results of these studies public in future reports to the EPA Administrator. At this time, the ITC has not determined whether to conduct a data-availability study on approximately 237 chemicals that were HPV chemicals only in the 1998 IUR, but not in the 1990, 1994 or 2002 IURs, because the ITC wants to review the 2006 IUR data for these chemicals. The goal of the ITC's data-availability studies is to provide tools for ACC, SDA, SOCMA, and other stakeholders to use in efforts to provide information on publicly available studies for IUR chemicals.

The data-availability study of the 235 substances that were HPV chemicals in the 1998 and 2002 IURs, but not in the 1990 or 1994 IURs was based on the methods that EPA used for assessing the availability of data for the 1990 HPV Challenge Program List of Chemicals (see *http://www.epa.gov/chemrtk/hazchem.pdf*), but was expanded to include studies sponsored by the NTP (*http://ntp-server.niehs.nih.gov/*). The methods that EPA used for the 1990 HPV chemicals were designed to determine if there were available studies for 6 endpoints that were required for the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) dossiers. These 6 endpoints included 4 health-effects related endpoints (acute toxicity, chronic toxicity, mutagenicity, reproductive effects/developmental toxicity), an ecological effects endpoint and an environmental fate endpoint. Expanding the EPA methods to include NTP studies provided opportunities to capture studies on other health-effects related endpoints (e.g., neurotoxicity and carcinogenicity) and on the 4 health-effects related endpoints that might not be included in information sources that were searched. The results of the data-availability study of the 235 substances that were HPV chemicals in the 1998 and 2002 IURs, but not in the 1990 or 1994 IURs are summarized in Table 4 of this section.

TABLE 4.—NUMBER OF SIDS ENDPOINTS FOR WHICH STUDIES WERE AVAILABLE FOR THE 235 HPV CHEMICALS IN THE 1998 AND 2002 IURS, BUT NOT IN THE 1990 OR 1994 IURS

Number of SIDS endpoints for which studies were available	Number of chemicals
0	122
1	35
2	22
3	16
4	14
5	21
6	5
TOTAL	235

The 235 HPV chemicals in the 1998 and 2002 IURs, but not in the 1990 or 1994 IURs are listed in Appendix B. A table identifying the publicly available studies for the 235 HPV chemicals in the 1998 and 2002 IURs is posted on the ITC's web site (*http://www.epa.gov/opptintr/itc*).

C. Status of Requests for Data on Vanadium Compounds in Surface Impoundments

As discussed in the 55th ITC Report, the ITC is concerned that vanadium compounds may be released into fly ash ponds and related impoundments and could be toxic to avian and wildlife species as exemplified by a recent report of dead Canada geese at a petroleum refinery fly ash pond in Delaware. During this reporting period, the ITC contacted the ACC, American Petroleum Institute (API), Electric Power Research Institute (EPRI), Alabama Power Company, Barrick Goldstrike Mines, Kerr-McGee Chemical, Newmont Mining Corporation and U.S. Vanadium Corporation to determine if these organizations could provide data on concentrations and species of vanadium compounds in surface impoundments (fluid-filled depressions). The API reported that one of their members found less than 1 part per billion (ppb) vanadium in their waste ponds. EPRI suggested that higher concentrations of vanadium compounds are likely to be found in fly-ash ponds at coal-fired power plants than at other electricity-generating facilities, but that concentrations in ponds would likely range from 10 to 100 ppb vanadium. From the companies listed above, none reported vanadium concentrations as high as the 478,000 ppb vanadium in the Delaware petroleum refinery fly ash pond.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List

1. *HPV orphan chemicals.* Naphtha (petroleum), clay-treated light straight-run (CAS No. 68527–22–0) is being added to the *Priority Testing List* because it was inadvertently left off the original list of HPV orphan chemicals that were HPV chemicals in either the 1998 or 2002 IURs (Table 5 of this section). EPA has confirmed that this chemical was produced at HPV volumes in 2002. Four additional HPV orphan chemicals are being added because previous sponsors withdrew their sponsorship commitments (Table 5 of this section).

TABLE 5.—HPV ORPHAN CHEMICALS BEING ADDED TO THE PRIORITY TESTING LIST IN THIS 56TH ITC REPORT

CAS No.	HPV orphan chemical
77–86–1	1,3-Propanediol, 2-amino-2-(hydroxymethyl)-
61788–44–1	Phenol, styrenated
68457–74–9	Phenol, isobutylenated methylstyrenated
68527–22–0	Naphtha (petroleum), clay-treated light straight-run
72162–15–3	1-Decene, sulfurized

2. *Tungsten compounds.*In its 53rd ITC Report, the ITC added 20 tungsten compounds to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs (Ref. 3). In this 56th ITC Report, the ITC is adding tungsten oxide ($W_{18}O_{49}$) (CAS No. 12037–57–9) and tungsten oxide ($W_{10}O_{29}$) (CAS No. 12037–58–0) to the *Priority Testing List* and is soliciting information on health effects and occupational exposures.

B. Chemicals Removed from the Priority Testing List

1. *HPV orphan chemicals.* The ITC is removing ethanol, 2-methoxy- (CAS No. 109–86–4) and tetradecane (CAS No. 629–59–4) from the December 8, 2004 *Priority Testing List* because sponsorship of these two substances was transferred to the ICCA HPV Initiative. The ITC is removing 11 HPV orphan chemicals from the December 8, 2004 *Priority Testing List* that were sponsored before the 55th ITC Report was sent to the EPA Administrator on December 8, 2004 (Table 6 of this section).

TABLE 6.—HPV ORPHAN CHEMICALS THAT WERE SPONSORED BEFORE DECEMBER 8, 2004

CAS No.	HPV orphan chemical
90–43–7	[1,1'-Biphenyl]-2-ol
94–75–7	Acetic acid, (2,4-dichlorophenoxy)-
542–75–6	1-Propene, 1,3-dichloro-
1646–75–9	Propanal, 2-methyl-2-(methylthio)-, oxime
1918–02–1	2-Pyridinecarboxylic acid, 4-amino-3,5,6-trichloro-
1929–82–4	Pyridine, 2-chloro-6-(trichloromethyl)-
3586–14–9	Benzene, 1-methyl-3-phenoxy-
64742–24–1	Sludges (petroleum), acid
68920–64–9	Disulfides, di-C1–2-alkyl
68955–96–4	Disulfides, dialkyl and di-Ph, naphtha sweetening
68988–99–8	Phenols, sodium salts, mixed with sulfur compounds, gasoline alk. scrubber residues

The ITC is also removing 17 HPV orphan chemicals from the December 8, 2004 *Priority Testing List* that no longer meet the HPV criterion (Table 7 of this section).

TABLE 7.—HPV ORPHAN CHEMICALS THAT NO LONGER MEET THE HPV CRITERION

CAS No.	HPV orphan chemical
75–34–3	Ethane, 1,1-dichloro-
95–94–3	Benzene, 1,2,4,5-tetrachloro-
96–23–1	2-Propanol, 1,3-dichloro-
307–35–7	1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
597–31–9	Propanal, 3-hydroxy-2,2-dimethyl-
625–55–8	Formic acid, 1-methylethyl ester

TABLE 7.—HPV ORPHAN CHEMICALS THAT NO LONGER MEET THE HPV CRITERION—Continued

CAS No.	HPV orphan chemical
1691–99–2	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- N-(2-hydroxyethyl)-
2702–72–9	Acetic acid, (2,4-dichlorophenoxy)-, sodium salt
4080–31–3	3,5,7-Triaza-1-azoniatricyclo[3,3,1,13,7] decane, 1-(3-chloro-2-propenyl)-, chloride
4300–97–4	Propanoyl chloride, 3-chloro-2,2-dimethyl-
7446–81–3	2-Propenoic acid, sodium salt
14143–60–3	2-Pyridinecarbonitrile, 4-amino-3,5,6-trichloro-
24448–09–7	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-
37439–34–2	2(1H)-Pyridinone, 3,5,6-trichloro-, sodium salt
56038–89–2	Benzenamine, N-(1-ethylpropyl)-3,5-dimethyl-
64771–71–7	Paraffins (petroleum), normal C>10
68512–63–0	Benzene, ethenyl-, distn. residues

2. *Pyridinamine compounds.* In its 53rd ITC Report, the ITC added 3 pyridinamine compounds to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs (Ref. 3). Since then, the ITC has reviewed reports submitted in response to the December 7, 2004 PAIR rule (Ref. 4). In this 56th ITC Report, the ITC is removing 2-pyridinamine (CAS No. 504–29–0), 3-pyridinamine (CAS No. 462–08–8) and 4-pyridinamine (CAS No. 504–24–5) from the *Priority Testing List* because information submitted in response to the PAIR rule suggested low potential for occupational exposure.

3. *Indium compounds.* In its 47th ITC Report, the ITC added 37 indium compounds to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs (Ref. 5). Twenty-eight indium

compounds were removed from the *Priority Testing List* because no production or importation data were submitted to EPA in response to the July 26, 2001, PAIR rule (Ref. 6). These 28 indium compounds are listed in the 51st ITC Report (Ref. 7). The remaining 9 indium compounds were added to the May 4, 2004 TSCA section 8(d) HaSDR rule (Ref. 8). In this 56th ITC Report, the ITC is removing 6 indium compounds from the *Priority Testing List* because information submitted in response to the PAIR rule suggested low potential for occupational exposure and because only one study was submitted in response to the HaSDR rule (Table 8 of this section).

TABLE 8.—INDIUM COMPOUNDS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Indium compound
1312–43–2	Indium oxide (In2O3)
10025–82–8	Indium chloride (InCl3)
13464–82–9	Sulfuric acid, indium(3+) salt (3:2)
20661–21–6	Indium hydroxide (In(OH)3)
25114–58–3	Acetic acid, indium(3+) salt
66027–93–8	Sulfamic acid, indium(3+) salt

The 3 indium compounds remaining on the *Priority Testing List* are listed in Table 9 of this section.

TABLE 9.—INDIUM COMPOUNDS REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Indium compound
7440–74–6	Indium
22398–80–7	Indium phosphide (InP)
50926–11–9	Indium tin oxide.

For these 3 indium compounds, the ITC needs data on: 1) concentrations to which workers may be exposed during manufacturing and downstream uses and 2) numbers of workers associated with manufacturing and downstream uses. The ITC needs this information to assess occupational exposures.

4. *Vanadium compounds.* In its 51st ITC Report, the ITC added 43 vanadium compounds to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs (Ref. 7). At the ITC's request, the EPA added the 43 vanadium compounds to the June 11, 2003 PAIR rule (Ref. 9). In its 54th ITC Report, the ITC removed 25 vanadium compounds from the *Priority Testing List* because information submitted in response to the PAIR rule suggested low potential for occupational exposure (Ref. 10).

At this time, the ITC needs data on water and sediment concentrations of vanadium species in fly ash ponds and related impoundments (fluid-filled depressions) and the pH of these ponds and impoundments. In addition, the ITC needs information on any wildlife mortality events occurring near these impoundments. A recent study that described the toxicity and hazard of vanadium to mallard ducks and Canada geese was conducted because of wildlife mortalities that occurred in a Delaware oil refinery fly ash pond contaminated with vanadium compounds (Ref. 11).

In this 56th ITC Report, the ITC is removing 6 vanadium compounds from the *Priority Testing List* (Table 10 of this section).

TABLE 10.—VANADIUM COMPOUNDS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Vanadium compounds
11130–21–5	Vanadium carbide
12035–98–2	Vanadium oxide (VO)
12036–21–4	Vanadium oxide (VO2)
24646–85–3	Vanadium nitride (VN)
27774–13–6	Vanadium, oxo[sulfato(2-)-.kappa.O]- (Vanadyl sulfate)
65232–89–5	Vanadium hydroxide oxide phosphate

The ITC is removing vanadium oxide (VO) (CAS No. 12035–98–2), vanadium oxide (VO2) (CAS No. 12036–24–1), vanadium nitride (VN) (CAS No. 24646–85–3) and vanadium, oxo[sulfato(2-)-.kappa.O]- (Vanadyl sulfate) (CAS No. 27774–13–6) from the *Priority Testing List* because information submitted in response to the PAIR rule suggested low potential for occupational exposure. The ITC is removing vanadium carbide (CAS No. 11130–21–5) and vanadium hydroxide oxide phosphate (CAS No. 65232–89–5) from the *Priority Testing List* because neither is likely to be a contaminant in fly ash ponds and related impoundments.

Table 11 of this section lists the 12 vanadium compounds remaining on the *Priority Testing List.*

TABLE 11.—VANADIUM COMPOUNDS REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Vanadium compounds
1314–34–7	Vanadium oxide (V2O3) [Vanadium trioxide]
1314–62–1	Vanadium oxide (V2O5) [Vanadium pentoxide]
7632–51–1	Vanadium chloride (VCl4), (T-4)- [Vanadium tetrachloride]
7727–18–6	Vanadium, trichlorooxo-, (T-4)- [Vanadium oxytrichloride]
7803–55–6	Vanadate (VO31-), ammonium [Ammonium metavanadate]
12166–27–7	Vanadium sulfide (VS)
12604–58–9	Vanadium alloy, base, V,C,Fe (Ferrovanadium)
13517–26–5	Sodium vanadium oxide (Na4V2O7) [Sodium pyrovanadate]
13718–26–8	Vanadate (VO31-), sodium [Sodium metavanadate]
13721–39–6	Sodium vanadium oxide (Na3VO4) [Sodium orthovanadate]
13769–43–2	Vanadate (VO31-), potassium [Potassium metavanadate]
14059–33–7	Bismuth vanadium oxide (BiVO4)

V. References

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VI. The TSCA Interagency Testing Committee

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Appendices

APPENDIX A—CHEMICAL ABSTRACTS SERVICE REGISTRY NUMBER (CAS NO.) AND TSCA INVENTORY NAMES OF HPV ORPHAN CHEMICALS THAT THE ITC IS REQUESTING EPA ADD TO TSCA SECTION 8(A) AND 8(D) RULES

CAS No.	Chemical name
62–56–6	Thiourea
74–97–5	Methane, bromochloro-
75–46–7	Methane, trifluoro-
77–76–9	Propane, 2,2-dimethoxy-
77–86–1	1,3-Propanediol, 2-amino-2-(hydroxymethyl)-
81–07–2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide
81–16–3	1-Naphthalenesulfonic acid, 2-amino-
81–84–5	1H,3H-Naphtho[1,8-cd]pyran-1,3-dione
83–41–0	Benzene, 1,2-dimethyl-3-nitro-
84–69–5	1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester
85-40–5	1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-

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CAS No.	Chemical name
91–68–9	Phenol, 3-(diethylamino)-
94–96–2	1,3-Hexanediol, 2-ethyl-
96–22–0	3-Pentanone
97–00–7	Benzene, 1-chloro-2,4-dinitro-
98–09–9	Benzenesulfonyl chloride
98–16–8	Benzenamine, 3-(trifluoromethyl)-
98–56–6	Benzene, 1-chloro-4-(trifluoromethyl)-
99–51–4	Benzene, 1,2-dimethyl-4-nitro-
100–64–1	Cyclohexanone, oxime
101–34–8	9-Octadecenoic acid, 12-(acetyloxy)-,1,2,3-propanetriyl ester, (9Z,9'Z,9''Z,12R,12'R,12''R)-
104–66–5	Benzene, 1,1'-[1,2-ethanediylbis(oxy)]bis-
104–93–8	Benzene, 1-methoxy-4-methyl-
107–39–1	1-Pentene, 2,4,4-trimethyl-
107–40–4	2-Pentene, 2,4,4-trimethyl-
107–45–9	2-Pentanamine, 2,4,4-trimethyl-
110–18–9	1,2-Ethanediamine, N,N,N',N'-tetramethyl-
110–33–8	Hexanedioic acid, dihexyl ester
111–44–4	Ethane, 1,1'-oxybis[2-chloro-
111–85–3	Octane, 1-chloro-
111–91–1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
118–90–1	Benzoic acid, 2-methyl-
119–33–5	Phenol, 4-methyl-2-nitro-
121–69–7	Benzenamine, N,N-dimethyl-
121–82–4	1,3,5-Triazine, hexahydro-1,3,5-trinitro-
124–63–0	Methanesulfonyl chloride
127–68–4	Benzenesulfonic acid, 3-nitro-, sodium salt
131–57–7	Methanone, (2-hydroxy-4-methoxyphenyl)phenyl-
137–20–2	Ethanesulfonic acid, 2-[methyl[(9Z)-1-oxo-9- octadecenyl]amino]-, sodium salt
138–25–0	1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester
139–40–2	1,3,5-Triazine-2,4-diamine, 6-chloro-N,N'-bis(1-methylethyl)-
140–93–2	Carbonodithioic acid, O-(1-methylethyl) ester, sodium salt
142–73–4	Glycine, N-(carboxymethyl)-
150–50–5	Phosphorotrithious acid, tributyl ester
330–54–1	Urea, N'-(3,4-dichlorophenyl)-N,N-dimethyl-
460–00–4	Benzene, 1-bromo-4-fluoro-
506–51–4	1-Tetracosanol

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CAS No.	Chemical name
506–52–5	1-Hexacosanol
513–74–6	Carbamodithioic acid, monoammonium salt
515–40–2	Benzene, (2-chloro-1,1-dimethylethyl)-
529–33–9	1-Naphthalenol, 1,2,3,4-tetrahydro-
529–34–0	1(2H)-Naphthalenone, 3,4-dihydro-
542–92–7	1,3-Cyclopentadiene
557–61–9	1-Octacosanol
563–72–4	Ethanedioic acid, calcium salt (1:1)
579–66–8	Benzenamine, 2,6-diethyl-
590–19–2	1,2-Butadiene
592–45–0	1,4-Hexadiene
598–72–1	Propanoic acid, 2-bromo-
617–94–7	Benzenemethanol, .alpha.,.alpha.-dimethyl-
628–13–7	Pyridine, hydrochloride
628–96–6	1,2-Ethanediol, dinitrate
645–62–5	2-Hexenal, 2-ethyl-
693–07–2	Ethane, 1-chloro-2-(ethylthio)-
693–95–8	Thiazole, 4-methyl-
756–80–9	Phosphorodithioic acid, O,O-dimethyl ester
870–72–4	Methanesulfonic acid, hydroxy-, monosodium salt
928–72–3	Glycine, N-(carboxymethyl)-, disodium salt
939–97–9	Benzaldehyde, 4-(1,1-dimethylethyl)-
1000–82–4	Urea, (hydroxymethyl)-
1002–69–3	Decane, 1-chloro-
1111–78–0	Carbamic acid, monoammonium salt
1115–20–4	Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester
1401–55–4	Tannins
1445–45–0	Ethane, 1,1,1-trimethoxy-
1459–93–4	1,3-Benzenedicarboxylic acid, dimethyl ester
1498–51–7	Phosphorodichloridic acid, ethyl ester
1558–33–4	Silane, dichloro(chloromethyl)methyl-
1738–25–6	Propanenitrile, 3-(dimethylamino)-
1912–24–9	1,3,5-Triazine-2,4-diamine, 6-chloro-N-ethyl-N'-(1-methylethyl)-
2152–64–9	Benzenamine, N-phenyl-4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]-, monohydrochloride
2210–79–9	Oxirane, [(2-methylphenoxy)methyl]-
2372–45–4	1-Butanol, sodium salt

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CAS No.	Chemical name
2409–55–4	Phenol, 2-(1,1-dimethylethyl)-4-methyl-
2425–54–9	Tetradecane, 1-chloro-
2494–89–5	Ethanol, 2-[(4-aminophenyl)sulfonyl]-, hydrogen sulfate (ester)
2524–03–0	Phosphorochloridothioic acid, O,O-dimethyl ester
2611–00–9	3-Cyclohexene-1-carboxylic acid, 3-cyclohexen-1-ylmethyl ester
2691–41–0	1,3,5,7-Tetrazocine, octahydro-1,3,5,7-tetranitro-
2814–20–2	4(1H)-Pyrimidinone, 6-methyl-2-(1-methylethyl)-
2905–62–6	Benzoyl chloride, 3,5-dichloro-
2915–53–9	2-Butenedioic acid (2Z)-, dioctyl ester
3039–83–6	Ethenesulfonic acid, sodium salt
3088–31–1	Ethanol, 2-[2-(dodecyloxy)ethoxy]-, hydrogen sulfate, sodium salt
3132–99–8	Benzaldehyde, 3-bromo-
3338–24–7	Phosphorodithioic acid, O,O-diethyl ester, sodium salt
3386–33–2	Octadecane, 1-chloro-
3710–84–7	Ethanamine, N-ethyl-N-hydroxy-
3779–63–3	1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-tris(6-isocyanatohexyl)-
3965–55–7	1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt
4035–89–6	Imidodicarbonic diamide, N,N',2-tris(6-isocyanatohexyl)-
4170–30–3	2-Butenal
4316–73–8	Glycine, N-methyl-, monosodium salt
4860–03–1	Hexadecane, 1-chloro-
5026–74–4	Oxiranemethanamine, N-[4-(oxiranylmethoxy)phenyl]-N- (oxiranylmethyl)-
5216–25–1	Benzene, 1-chloro-4-(trichloromethyl)-
5460–09–3	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-, monosodium salt
5915–41–3	1,3,5-Triazine-2,4-diamine, 6-chloro-N-(1,1-dimethylethyl)-N'-ethyl-
6473–13–8	2-Naphthalenesulfonic acid, 6-[(2,4-diaminophenyl)azo]-3-[[4-[[4-[[7- [(2,4-diaminophenyl)azo]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]phenyl]amino]-3-sulfophenyl]azo]-4-hydroxy-, trisodium salt
6863–58–7	Butane, 2,2'-oxybis-
6865–35–6	Octadecanoic acid, barium salt
7320–37–8	Oxirane, tetradecyl-
7795–95–1	1-Octanesulfonyl chloride
8001–58–9	Creosote
10265–69–7	Glycine, N-phenyl-, monosodium salt
13749–94–5	Ethanimidothioic acid, N-hydroxy-, methyl ester
13826–35–2	Benzenemethanol, 3-phenoxy-
14666–94–5	9-Octadecenoic acid (9Z)-, cobalt salt
17103–31–0	Urea, sulfate (2:1)

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CAS No.	Chemical name
17321–47–0	Phosphoramidothioic acid, O,O-dimethyl ester
17976–43–1	2,4,6,8,3,5,7-Benzotetraoxatriplumbacycloundecin-3,5,7-triylidene, 1,9-dihydro-1,9-dioxo-
19438–61–0	1,3-Isobenzofurandione, 5-methyl-
19525–59–8	Glycine, N-phenyl-, monopotassium salt
20068–02–4	2-Butenenitrile, 2-methyl-, (2Z)-
20227–53–6	Phosphorous acid, 2-(1,1-dimethylethyl)-4-[1-[3-(1,1-dimethylethyl)-4-hydroxyphenyl]-1-methylethyl]phenyl bis(4-nonylphenyl) ester
20469–71–0	Hydrazinecarbodithioic acid, compd. with hydrazine (1:1)
21351–39–3	Urea, sulfate (1:1)
22527–63–5	Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester
24615–84–7	2-Propenoic acid, 2-carboxyethyl ester
24794–58–9	Formic acid, compd. with 2,2',2''-nitrilotris[ethanol] (1:1)
25154–38–5	Piperazineethanol
25168–05–2	Benzene, chloromethyl-
25168–06–3	Phenol, (1-methylethyl)-
25321–41–9	Benzenesulfonic acid, dimethyl-
25383–99–7	Octadecanoic acid, 2-(1-carboxyethoxy)-1-methyl-2-oxoethyl ester, sodium salt
25646–71–3	Methanesulfonamide, N-[2-[(4-amino-3-methylphenyl)ethylamino]ethyl]-, sulfate (2:3)
26377–29–7	Phosphorodithioic acid, O,O-dimethyl ester, sodium salt
26401–27–4	Phosphorous acid, isooctyl diphenyl ester
26680–54–6	2,5-Furandione, dihydro-3-(octenyl)-
27193–28–8	Phenol, (1,1,3,3-tetramethylbutyl)-
28106–30–1	Benzene, ethenylethyl-
28188–24–1	Octadecanoic acid, 2-(hydroxymethyl)-2-[[(1-oxooctadecyl)oxy]methyl]-1,3-propanediyl ester
28777–98–2	2,5-Furandione, dihydro-3-(octadecenyl)-
28908–00–1	Benzothiazole, 2-[(chloromethyl)thio]-
30574–97–1	2-Butenenitrile, 2-methyl-, (2E)-
32072–96–1	2,5-Furandione, 3-(hexadecenyl)dihydro-
33509–43–2	1,2,4-Triazin-5(2H)-one, 4-amino-6-(1,1-dimethylethyl)-3,4-dihydro-3-thioxo-
34689–46–8	Phenol, methyl-, sodium salt
35203–06–6	Benzenamine, 2-ethyl-6-methyl-N-methylene-
35203–08–8	Benzenamine, 2,6-diethyl-N-methylene-
37734–45–5	Carbonochloridothioic acid, S-(phenylmethyl) ester
37764–25–3	Acetamide, 2,2-dichloro-N,N-di-2-propenyl-
38185–06–7	Benzenesulfonic acid, 4-chloro-3,5-dinitro-, potassium salt
38321–18–5	Ethanol, 2-(2-butoxyethoxy)-, sodium salt
39515–51–0	Benzaldehyde, 3-phenoxy-

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CAS No.	Chemical name
40630–63–5	1-Octanesulfonyl fluoride
40876–98–0	Butanedioic acid, oxo-, diethyl ester, ion(1-), sodium
51632–16–7	Benzene, 1-(bromomethyl)-3-phenoxy-
52184–19–7	Phenol, 2,4-bis(1,1-dimethylpropyl)-6-[(2- nitrophenyl)azo]-
52556–42–0	1-Propanesulfonic acid, 2-hydroxy-3-(2-propenyloxy)-, monosodium salt
52663–57–7	Ethanol, 2-butoxy-, sodium salt
56803–37–3	Phosphoric acid, (1,1-dimethylethyl)phenyl diphenyl ester
57693–14–8	Chromate(3-), bis[3-(hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7-nitro-1-naphthalenesulfonato(3-)]-, trisodium
61788–44–1	Phenol, styrenated
61788–76–9	Alkanes, chloro
61789–32–0	Fatty acids, coco, 2-sulfoethyl esters, sodium salts
61789–85–3	Sulfonic acids (petroleum)
63302–49–8	Phosphorochloridous acid, bis(4-nonylphenyl) ester
64743–02–8	Alkenes, C>10 .alpha.-
64743–03–9	Phenols (petroleum)
65996–79–4	Solvent naphtha (coal)
65996–80–7	Ammonia liquor (coal)
65996–81–8	Fuel gases, coke-oven
65996–82–9	Tar oils, coal
65996–83–0	Extracts, coal tar oil alk.
65996–86–3	Extract oils (coal), tar base
65996–87–4	Extract residues (coal), tar oil alk.
65996–89–6	Tar, coal, high-temp.
65996–91–0	Distillates (coal tar), upper
65996–92–1	Distillates (coal tar)
66071–94–1	Corn, steep liquor
68081–86–7	Phenol, nonyl derivs.
68082–78–0	Lard, oil, Me esters
68153–60–6	Fatty acids, tall-oil, reaction products with diethylenetriamine, acetates
68187–41–7	Phosphorodithioic acid, O,O-di-C1–14-alkyl esters
68187–57–5	Pitch, coal tar-petroleum
68187–59–7	Coal, anthracite, calcined
68188–18–1	Paraffin oils, chlorosulfonated, saponified
68308–74–7	Amides, tall-oil fatty, N,N-di-Me
68309–16–0	Fatty acids, tall-oil, 2-(2-hydroxyethoxy)ethyl esters
68309–27–3	Fatty acids, tall-oil, sulfonated, sodium salts

APPENDIX A—CHEMICAL ABSTRACTS SERVICE REGISTRY NUMBER (CAS NO.) AND TSCA INVENTORY NAMES OF HPV ORPHAN CHEMICALS THAT THE ITC IS REQUESTING EPA ADD TO TSCA SECTION 8(A) AND 8(D) RULES—Continued

CAS No.	Chemical name
68334–01–0	Disulfides, alkylaryl dialkyl diaryl, petroleum refinery spent caustic oxidn. products
68441–66–7	Decanoic acid, mixed esters with dipentaerythritol, octanoic acid and valeric acid
68442–60–4	Acetaldehyde, reaction products with formaldehyde, by-products from
68442–77–3	2-Butenediamide, (2E)-, N,N'-bis[2-(4,5-dihydro-2-nortall-oil alkyl-1H-imidazol-1-yl)ethyl] derivs.
68457–74–9	Phenol, isobutylenated methylstyrenated
68476–80–2	Fats and Glyceridic oils, vegetable, deodorizer distillates
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free
68513–62–2	Disulfides, C5–12-alkyl
68514–41–0	Ketones, C12-branched
68515–89–9	Barium, carbonate nonylphenol complexes
68527–22–0	Naphtha (petroleum), clay-treated light straight-run
68584–25–8	Benzenesulfonic acid, C10–16-alkyl derivs., compounds with triethanolamine
68602–81–3	Distillates, hydrocarbon resin production higher boiling
68603–84–9	Carboxylic acids, C5-9
68608–59–3	Ethane, 1,2-dichloro-, manufacturer of, by-products from, distn. lights
68609–05–2	Cyclohexane, oxidized, non-acidic by-products, distn. lights
68610–90–2	2-Butenedioic acid (2E)-, di-C8–18-alkyl esters
68649–42–3	Phosphorodithioic acid, O,O-di-C1–14-alkyl esters
68650–36–2	Aromatic hydrocarbons, C8, o-xylene-lean
68782–97–8	Distillates (petroleum), hydrofined lubricating-oil
68815–50–9	Octadecanoic acid, reaction products with 2-[(2-aminoethyl)amino]ethanol
68909–77–3	Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine derivs. residues
68915–05–9	Fatty acids, tall-oil, low-boiling, reaction products with ammonia-ethanolamine reaction by-products
68915–39–9	Cyclohexane, oxidized, aq. ext., sodium salt
68918–16–1	Tar, coal, dried and oxidized
68919–17–5	Hydrocarbons, C12–20, catalytic alkylation by-products
68937–29–1	1,6-Hexanediol, distn. residues
68937–69–9	Carboxylic acids, C6–18 and C5–15-di-
68937–70–2	Carboxylic acids, C6–18 and C8–15-di-
68937–72–4	Carboxylic acids, di-, C4–11
68953–80–0	Benzene, mixed with toluene, dealkylation product
68955–37–3	Acid chlorides, tallow, hydrogenated
68955–76–0	Aromatic hydrocarbons, C9–16, biphenyl deriv.-rich
68987–41–7	Benzene, ethylenated
68987–66–6	Ethene, hydrated, by-products from
68988–22–7	1,4-Benzenedicarboxylic acid, dimethyl ester, manuf. of, by-products from

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CAS No.	Chemical name
68990–61–4	Tar, coal, high-temp., high-solids
68990–65–8	Fats and Glyceridic oils, vegetable, reclaimed
70084–98–9	Terpenes and Terpenoids, C10–30, distn. residues
70693–50–4	Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[(2- nitrophenyl)azo]-
70851–08–0	Amides, coco, N-[3-(dimethylamino)propyl], alkylation products with sodium 3-chloro-2-hydroxypropanesulfonate
71077–05–9	Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine product tower residues
72162–15–3	1-Decene, sulfurized
72162–28–8	2-Propanone, reaction products with phenol
72854–27–4	Tannins, reaction products with sodium bisulfite, sodium polysulfide and sodium sulfite
73665–18–6	Extract residues (coal), tar oil alk., naphthalene distn. residues
83864–02–2	Nickel, bis[(cyano-C)triphenylborato(1-)-N]bis(hexanedinitrile-N,N')-
84501–86–0	Hexanedioic acid, esters with high-boiling C6–10-alkene hydroformylation products
90640–80–5	Anthracene oil
90640–86–1	Distillates (coal tar), heavy oils
119345–02–7	Benzene, 1,1'-oxybis-, tetrapropylene derivs.
125997–20–8	Phosphoric acid, mixed 3-bromo-2,2-dimethylpropyl and 2-bromoethyl and 2-chloroethyl esters

APPENDIX B—CHEMICAL ABSTRACTS SERVICE REGISTRY NUMBER (CAS NO.) AND TSCA INVENTORY NAMES OF HPV CHEMICALS IN THE 1998 AND 2002 IURS, BUT NOT IN THE 1990 OR 1994 IURS

CAS No.	Chemical name
62–33–9	Calciate(2-), [[N,N'-1,2-ethanediylbis[N-[(carboxy-.kappa.O)methyl]glycinato-.kappa.N,.kappa.O]](4-)]-, disodium, (OC-6–21)-
65–45–2	Benzamide, 2-hydroxy-
75–88–7	Ethane, 2-chloro-1,1,1-trifluoro-
76–05–1	Acetic acid, trifluoro-
76–16–4	Ethane, hexafluoro-
79–39–0	2-Propenamide, 2-methyl-
88–41–5	Cyclohexanol, 2-(1,1-dimethylethyl)-, acetate
89–00–9	2,3-Pyridinedicarboxylic acid
94–71–3	Phenol, 2-ethoxy-
95–16–9	Benzothiazole
96–34–4	Acetic acid, chloro-, methyl ester
100–48–1	4-Pyridinecarbonitrile
102–36–3	Benzene, 1,2-dichloro-4-isocyanato-
103–29–7	Benzene, 1,1'-(1,2-ethanediyl)bis-
106–94–5	Propane, 1-bromo-
107–58–4	2-Propenamide, N-(1,1-dimethylethyl)-

APPENDIX B—CHEMICAL ABSTRACTS SERVICE REGISTRY NUMBER (CAS NO.) AND TSCA INVENTORY NAMES OF HPV CHEMICALS IN THE 1998 AND 2002 IURS, BUT NOT IN THE 1990 OR 1994 IURS—Continued

CAS No.	Chemical name
109–43–3	Decanedioic acid, dibutyl ester
109–65–9	Butane, 1-bromo-
111–29–5	1,5-Pentanediol
111–57–9	Octadecanamide, N-(2-hydroxyethyl)-
112–61–8	Octadecanoic acid, methyl ester
115–25–3	Cyclobutane, octafluoro-
118–96–7	Benzene, 2-methyl-1,3,5-trinitro-
119–07–3	1,2-Benzenedicarboxylic acid, decyl octyl ester
119–53–9	Ethanone, 2-hydroxy-1,2-diphenyl-
121–32–4	Benzaldehyde, 3-ethoxy-4-hydroxy-
121–43–7	Boric acid (H3BO3), trimethyl ester
123–00–2	4-Morpholinepropanamine
135–57–9	Benzamide, N,N'-(dithiodi-2,1-phenylene)bis-
136–99–2	1H-Imidazole-1-ethanol, 4,5-dihydro-2-undecyl-
138–86–3	Cyclohexene, 1-methyl-4-(1-methylethenyl)-
139–07–1	Benzenemethanaminium, N-dodecyl-N,N-dimethyl-, chloride
139–08–2	Benzenemethanaminium, N,N-dimethyl-N-tetradecyl-, chloride
140–07–8	Ethanol, 2,2',2'',2'''-(1,2-ethanediyldinitrilo)tetrakis-
141–01–5	2-Butenedioic acid (2E)-, iron(2+) salt (1:1)
142–87–0	Sulfuric acid, monodecyl ester, sodium salt
335–42–2	Butanoyl fluoride, heptafluoro-
354–33–6	Ethane, pentafluoro-
420–46–2	Ethane, 1,1,1-trifluoro-
431–89–0	Propane, 1,1,1,2,3,3,3-heptafluoro-
497–39–2	Phenol, 2,4-bis(1,1-dimethylethyl)-5-methyl-
504–63–2	1,3-Propanediol
565–62–8	3-Penten-2-one, 3-methyl-
584–08–7	Carbonic acid, dipotassium salt
597–09–1	1,3-Propanediol, 2-ethyl-2-nitro-
598–55–0	Carbamic acid, methyl ester
611-20–1	Benzonitrile, 2-hydroxy-
612–00–0	Benzene, 1,1'-ethylidenebis-
624–54–4	Propanoic acid, pentyl ester
628–87–5	Acetonitrile, 2,2'-iminobis-
677–21–4	1-Propene, 3,3,3-trifluoro-
826–36–8	4-Piperidinone, 2,2,6,6-tetramethyl-

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CAS No.	Chemical name
837–08–1	Phenol, 2-[1-(4-hydroxyphenyl)-1-methylethyl]-
865–47–4	2-Propanol, 2-methyl-, potassium salt
941–69–5	1H-Pyrrole-2,5-dione, 1-phenyl-
980–26–7	Quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-2,9-dimethyl-
1071–22–3	Propanenitrile, 3-(trichlorosilyl)-
1076–97–7	1,4-Cyclohexanedicarboxylic acid
1112–39–6	Silane, dimethoxydimethyl-
1305–62–0	Calcium hydroxide (Ca(OH)2)
1313–82–2	Sodium sulfide (Na2S)
1317–36–8	Lead oxide (PbO)
1333–82–0	Chromium oxide (CrO3)
1719–58–0	Silane, chloroethenyldimethyl-
1737–93–5	Pyridine, 3,5-dichloro-2,4,6-trifluoro-
1772–25–4	1,3,6-Hexanetricarbonitrile
1879–09–0	Phenol, 2-(1,1-dimethylethyl)-4,6-dimethyl-
2043–53–0	Decane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8-heptadecafluoro-10-iodo-
2235–00–9	2H-Azepin-2-one, 1-ethenylhexahydro-
2374–14–3	Cyclotrisiloxane, 2,4,6-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl)-
2495–39–8	2-Propene-1-sulfonic acid, sodium salt
2687–94–7	2-Pyrrolidinone, 1-octyl-
2929–95–5	Zinc, bis[O,O-bis(1-methylethyl) phosphorodithioato-.kappa.S,.kappa.S']-, (T-4)-
2996–92–1	Silane, trimethoxyphenyl-
3006–86–8	Peroxide, cyclohexylidenebis[(1,1-dimethylethyl)
3332–27–2	1-Tetradecanamine, N,N-dimethyl-, N-oxide
4067–16–7	3,6,9,12-Tetraazatetradecane-1,14-diamine
4193–55–9	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-(phenylamino)-1,3,5-triazin-2-yl]amino]-, disodium salt
4292–10–8	1-Propanaminium, N-(carboxymethyl)-N,N-dimethyl-3-[(1-oxododecyl)amino]-, inner salt
4342–61–4	Disilane, 1,2-dichloro-1,1,2,2-tetramethyl-
5205–93–6	2-Propenamide, N-[3-(dimethylamino)propyl]-2-methyl-
5333–42–6	1-Dodecanol, 2-octyl-
5593–70–4	1-Butanol, titanium(4+) salt
5888–33–5	2-Propenoic acid, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-ylester, rel-
6144–04–3	Benzene, (1-methylethenyl)-, dimer
6358–30–1	Diindolo[3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5,15-diethyl-5,15-dihydro-
6425–39–4	Morpholine, 4,4'-(oxydi-2,1-ethanediyl)bis-
6528–34–3	Butanamide, 2-[(4-methoxy-2-nitrophenyl)azo]-N-(2-methoxyphenyl)-3-oxo-

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CAS No.	Chemical name
7299–99–2	Hexanoic acid, 2-ethyl-, 2,2-bis[[(2-ethyl-1-oxohexyl)oxy]methyl]-1,3-propanediyl ester
7378–99–6	1-Octanamine, N,N-dimethyl-
7585–20–8	Acetic acid, zirconium salt
7758–29–4	Triphosphoric acid, pentasodium salt
7775–11–3	Chromic acid (H2CrO4), disodium salt
7785–70–8	Bicyclo[3.1.1]hept-2-ene, 2,6,6-trimethyl-, (1R,5R)-
8008–56–8	Oils, lemon
8012–95–1	Paraffin oils
8016–20–4	Oils, grapefruit
10043–52–4	Calcium chloride (CaCl2)
10049–04–4	Chlorine oxide (ClO2)
10124–37–5	Nitric acid, calcium salt
10192–32–2	1-Tetracosene
10213–78–2	Ethanol, 2,2’-(octadecylimino)bis-
10254–57–6	Carbamodithioic acid, dibutyl-, methylene ester
12645–50–0	Iron nickel zinc oxide
15647–08–2	Phosphorous acid, 2-ethylhexyl diphenyl ester
16424–35–4	Cyclopentanone, 2-pentylidene-
17462–58–7	Carbonochloridic acid, 1-methylpropyl ester
18172–67–3	Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene-, (1S,5S)-
21850–44–2	Benzene, 1,1’-(1-methylethylidene)bis[3,5-dibromo-4-(2,3-dibromopropoxy)-
22047–49–0	Octadecanoic acid, 2-ethylhexyl ester
22890–11–5	Decanamide, N-[3-(dimethylamino)propyl]-
23778–52–1	2,5,8,11,14-Pentaoxahexadecan-16-ol
25103–52–0	Isooctanoic acid
25168–21–2	2-Butenoic acid, 4,4’-[(dibutylstannylene)bis(oxy)]bis[4-oxo-, diisooctyl ester, (2Z,2’Z)-
25446–78–0	Ethanol, 2-[2-[2-(tridecyloxy)ethoxy]ethoxy]-, hydrogen sulfate, sodium salt
26142–30–3	Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-(oxiranylmethyl)-.omega.-(oxiranylmethoxy)-
26628–22–8	Sodium azide (Na(N3))
27460–02–2	Phosphoric acid, dodecyl diphenyl ester
28510–23–8	Hexanoic acid, 2-ethyl-, 2,2-dimethyl-1,3-propanediyl ester
28768–32–3	Oxiranemethanamine, N,N’-(methylenedi-4,1-phenylene)bis[N-(oxiranylmethyl)-
29911–27–1	2-Propanol, 1-(1-methyl-2-propoxyethoxy)-
30525–89–4	Paraformaldehyde
35541–81–2	1,4-Cyclohexanedimethanol, dibenzoate
37717–68–3	Methanesulfonamide, N-[2-[ethyl(3-methylphenyl)amino]ethyl]-

APPENDIX B—CHEMICAL ABSTRACTS SERVICE REGISTRY NUMBER (CAS NO.) AND TSCA INVENTORY NAMES OF HPV CHEMICALS IN THE 1998 AND 2002 IURS, BUT NOT IN THE 1990 OR 1994 IURS—Continued

CAS No.	Chemical name
38900–29–7	Nonanedioic acid, dilithium salt
38916–42–6	Aspartic acid, N-(3-carboxy-1-oxo-3-sulfopropyl)-N-octadecyl-, tetrasodium salt
39278–27–8	Lignosulfonic acid, barium salt
39421–75–5	Guar gum, 2-hydroxypropyl ether
40039–93–8	Phenol, 4,4'-(1-methylethylidene)bis[2,6-dibromo-, polymer with (chloromethyl)oxirane
41556–26–7	Decanedioic acid, bis(1,2,2,6,6-pentamethyl-4-piperidinyl) ester
48145–04–6	2-Propenoic acid, 2-phenoxyethyl ester
50594–66–6	Benzoic acid, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitro-
54464–57–2	Ethanone, 1-(1,2,3,4,5,6,7,8-octahydro-2,3,8,8-tetramethyl-2-naphthalenyl)-
56046–62–9	Methanesulfonamide, N-[2-[ethyl(3-methyl-4-nitrosophenyl)amino]ethyl]-
57499–57–7	Ethanone, 1-[1,6-dimethyl-4-(4-methyl-3-pentenyl)-3-cyclohexen-1-yl]-
58965–66–5	Benzene, 1,2,4,5-tetrabromo-3,6-bis(pentabromophenoxy)-
60506–81–2	2-Propenoic acid, 2-[[3-hydroxy-2,2-bis[[(1-oxo-2-propenyl)oxy]methyl]propoxy]methyl]-2-[[(1-oxo-2-propenyl) oxy]methyl]-1,3-propanediyl ester
61788–93–0	Amines, coco alkyldimethyl
61791–38–6	1H-Imidazole-1-ethanol, 4,5-dihydro-, 2-norcoco alkyl derivs.
64742–76–3	Naphthenic oils (petroleum), complex dewaxed light
64742–99–0	Residual oils (petroleum), oxidized
64754–94–5	Fatty acids, tall-oil, compds. with polyethylenepolyamine-tall-oil fatty acid reaction products
67700–81–6	Linseed oil, polymer with isophthalic acid and trimethylolpropane
67762–63–4	Fatty acids, tall-oil, Bu esters
67774–69–0	Urea, N,N''-(methylenedi-4,1-phenylene)bis-, N',N'''-ditallow alkyl derivs.
67784–80–9	Soybean oil, Me ester
67989–61–1	Linseed oil, polymer with isophthalic acid and pentaerythritol
68037–30–9	2-Butenedioic acid (2E)-, reaction products with linoleic acid
68052–23–3	1,3-Pentanediol, 2,2,4-trimethyl-, dibenzoate
68082–79–1	Lard, oil, polymd., oxidized
68130–15–4	Guar gum, carboxymethyl 2-hydroxypropyl ether, sodium salt
68130–50–7	1,2,4-Benzenetricarboxylic acid, mixed decyl and hexyl and octyl esters
68140–11–4	1H-Imidazole-1-ethanamine, 4,5-dihydro-, 2-nortall-oil alkyl derivs., acetates
68153–81–1	Grease
68154–05–2	Asphalt, sapon. products with tall oil, sodium salts
68188–26–1	Amines, tallow alkyl, reaction products with asphalt, hydrochlorides
68308–02–1	Tail gas (petroleum), distn., hydrogen sulfide-free
68308–09–8	Tail gas (petroleum), light straight-run naphtha stabilizer, hydrogen sulfide-free
68309–30–8	Fatty acids, tallow, hydrogenated, sodium salts
68424–26–0	Fatty acids, C16–18 and C18-unsatd., sodium salts

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CAS No.	Chemical name
68424–40–8	Fatty acids, C18-unsatd., dimers, bis(2-ethylhexyl) esters
68424–75–9	Sulfonic acids, lard-oil, polymd., oxidized, sodium salts
68425–15–0	Polysulfides, di-tert-dodecyl
68441–44–1	Boric acid, reaction products with ethylene glycol and polyethyleneglycol mono-Me ether
68441–94–1	Heptanoic acid, mixed esters with pentaerythritol and valeric acid
68442–09–1	Naphthalenesulfonic acid, sodium salt, isopropylated
68442–22–8	Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Bu) esters, zinc salts
68475–70–7	Aromatic hydrocarbons, C6–8, naphtha-raffinate pyrolyzate-derived
68477–40–7	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C10–12 fraction
68515–73–1	D-Glucopyranose, oligomeric, decyl octyl glycosides
68527–29–7	Tall oil, disproportionated, potassium salt
68568–82–1	Phenol, 2,2'-[[[(2-hydroxy-5-octylphenyl)methyl]imino]bis(2,1-ethanediyliminomethylene)]bis[4-octyl-, calcium salt
68584–26–9	Benzenesulfonic acid, C10–16-alkyl derivs., magnesium salts
68603–03–2	Distillates (petroleum), thermal cracked naphtha and gas oil, extractive
68603–04–3	Gas oils (petroleum), heavy vacuum, sulfonated
68603–21–4	Alcohols, C10–16, ethers with polyethylene glycol monobenzyl ether
68608–66–2	Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide
68647–61–0	Hydrocarbons, C4–5, tert-amylene concentrator by-product
68814–88–0	Distillates (petroleum), heavy naphthenic, sulfurized
68815–21–4	Tar acids, cresylic, sodium salts, caustic solns.
68890–70–0	Sulfuric acid, mono-C12–15-alkyl esters, sodium salts
68909–20–6	Silanamine, 1,1,1-trimethyl-N-(trimethylsilyl)-, hydrolysis products with silica
68909–92–2	Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Pr) esters
68909–93–3	Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Pr) esters, zinc salts
68918–39–8	Soaps, stocks, C8–18 and C18-unsatd. alkyl, acidulated
68919–00–6	Gases (petroleum), dehexanizer off
68919–76–6	Fatty acids, tall-oil, reaction products with 2-[(2-aminoethyl)amino]ethanol
68920–07–0	Hydrocarbons, C<10-linear
68938–96–5	Benzene, phenoxytetrapropylene-
68956–55–8	Hydrocarbons, C5-unsatd.
68988–45–4	Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Bu and pentyl) esters, zinc salts
69012–26–6	Slags, brass-manufg.
70225–05–7	1,2,4-Benzenetricarboxylic acid, mixed branched tridecyl and isodecyl esters
70693–30–0	1,2-Benzenedicarboxylic acid, mixed decyl and lauryl and octyl diesters
71808–39–4	Fatty acids, C16–18 and C18-unsatd., dimerized

APPENDIX B—CHEMICAL ABSTRACTS SERVICE REGISTRY NUMBER (CAS NO.) AND TSCA INVENTORY NAMES OF HPV CHEMICALS IN THE 1998 AND 2002 IURS, BUT NOT IN THE 1990 OR 1994 IURS—Continued

CAS No.	Chemical name
72318–87–7	Phenol, [[[3-(dimethylamino)propyl]amino]methyl]-, isobutylenated
72749–59–8	Quaternary ammonium compounds, tri-C6–12-alkylmethyl, chlorides
73170–89–5	13-Docosenenitrile, (13Z)-
73692–68–9	Hexadecanoic acid, compd. with N,N-dimethyl-1-octadecanamine (1:1)
80443–63–6	Oxirane, 2-[2-(4-chlorophenyl)ethyl]-2-(1,1-dimethylethyl)-
83682–78–4	1-Propanaminium, 3,3',3''-[phosphinylidynetris(oxy)]tris[N-(3-aminopropyl)-2-hydroxy-N,N-dimethyl-, N,N',N''-tri-C6–18 acyl derivs. trichlorides
84268–33–7	Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, methyl ester
84605–23–2	Formaldehyde, reaction products with (1-methylhexyl)phenol, calciumsalts
84632–65–5	Pyrrolo[3,4-c]pyrrole-1,4-dione, 3,6-bis(4-chlorophenyl)-2,5-dihydro-
84962–08–3	Phenol, dinonyl-, branched
90194–45–9	Benzenesulfonic acid, mono-C10–13-alkyl derivs., sodium salts
91125–43–8	Nonanoic acid, sulfophenyl ester, sodium salt
92045–58–4	Naphtha (petroleum), isomerization, C6-fraction
93762–80–2	Alkenes, C15–18
93924–10–8	Alkenes, C20–24 .alpha.-
93924–11–9	Alkenes, C24–28 .alpha.-
95251–52–8	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, sodium salt
96152–48–6	Phosphorous acid, (1-methylethylidene)di-4,1-phenylene tetra-C12–15-alkyl esters
101316–73–8	Lubricating oils (petroleum), used, noncatalytically refined
101646–62–2	Benzene, (1-methylpropyl)(1-phenylethyl)-
101646–63–3	Benzene, (1-methylpropyl)(phenylmethyl)-
110615–47–9	D-Glucopyranose, oligomeric, C10–16-alkyl glycosides
111163–74–7	Distillates (petroleum), catalytic reformer fractionator residue, low-boiling, sulfonated, sodium salts
119345–01–6	Phosphorous trichloride, reaction products with 1,1'-biphenyl and 2,4-bis(1,1-dimethylethyl)phenol
120525–96–4	Octadecanoic acid, C11–14-isoalkyl esters, C13-rich
125643–61–0	Benzenepropanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-, C7–9-branched alkyl esters
131459–42–2	Alkenes, C24–54-branched and linear .alpha.-
134440–55–4	Benzenepropanoic acid, 3-(1,1-dimethylethyl)-4-hydroxy-5-[(2-nitrophenyl)azo]-, methyl ester
142828–65–7	Benzene, (1-methylpropyl)(2-phenylethyl)-
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149458–07–1	Fatty acids, C12–18, Me esters, sulfonated, sodium salts
150135–58–3	1,4-Benzenedicarboxylic acid, reaction products with 1,4-cyclohexanedimethanol, diethylene glycol, di-Me terephthalate and ethylene glycol
157905–74–3	Ethanaminium, 2-hydroxy-N,N-bis(2-hydroxyethyl)-N-methyl-, esters with C16–18 and C18-unsatd. fatty acids, Me sulfates (salts)
162030–42–4	1,4-Benzenedicarboxylic acid, di-C11–14-isoalkyl esters, C13-rich

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163292–61–3	Fatty acids, C16–18 and C18-unsatd., esters with 2,2'-(methylimino)bis[ethanol]
163702–08–7	Propane, 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoro-
174333–80–3	Benzaldehyde, 2-hydroxy-5-nonyl-, oxime, branched
178535–25–6	Benzene, ethylenated, residues, distn. lights
203742–97–6	Formaldehyde, reaction products with branched 4-nonylphenol and 1-dodecanethiol
210555–94–5	Phenol, 4-dodecyl-, branched

[FR Doc. 05–21197 Filed 10–21–05; 8:45 am]
BILLING CODE 6560–50–S

Federal Register

Monday,
October 24, 2005

Part V

The President

Proclamation 7950—United Nations Day, 2005

Federal Register
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Monday, October 24, 2005

Presidential Documents

Title 3—

The President

Proclamation 7950 of October 20, 2005

United Nations Day, 2005

By the President of the United States of America

A Proclamation

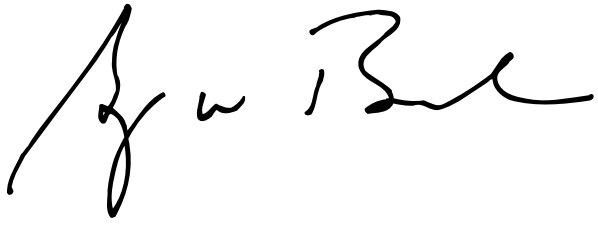
Sixty years ago, the United Nations was created to spread hope and liberty, fight poverty and disease, and help secure human rights and human dignity for people everywhere. On United Nations Day, we recommit ourselves to the ideals on which this organization was founded.

Throughout history, the human spirit has been tested by the forces of darkness and evil. Since its founding in the aftermath of World War II, the United Nations has worked to solve problems and harness the best instincts of humankind. Today, we must continue efforts to ease suffering, spread freedom, and lay the foundations of lasting peace for our children and grandchildren.

In the aftermath of last year's tsunami in the Indian Ocean region and this month's earthquakes in South Asia, we have witnessed the great capacity of human compassion. The support from the United Nations demonstrated how nations of the world can unite in common purpose to address difficult challenges. This enduring truth inspired those who created the United Nations, and it continues to do so 60 years later. With courage and conscience, we will meet our responsibilities to protect the lives and rights of others. As we do this, we will help fulfill the great promise of the United Nations, ensuring that all people can enjoy the peace, freedom, and dignity our Creator intended.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 2005, as United Nations Day. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to honor the observance of United Nations Day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–21354
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600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
*200–499	(869–056–00117–7)	33.00	July 1, 2005
*500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
***37**	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
*52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
*81–85	(869–056–00154–1)	60.00	July 1, 2005
*86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
*136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.